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March 27, 1998

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Bellsouth Telecommunications, Inc.'s Entry into Long Distance Interlata Service
in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996
Docket No. 97-00309

Dear David:

Enclosed please find an original and thirteen (13) copies of the testimony of Jim Falvey filed on behalf of ACSI. Copies will be served on all parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC



Henry Walker

HW/sja
Enclosures

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been hand delivered or mailed to the following persons on this the 27th day of March, 1998:

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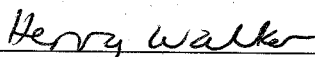
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Henry Walker

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

IN RE:

BellSouth Telecommunications, Inc.'s
Entry Into Long Distance (InterLATA)
Service in Tennessee Pursuant to Section
271 of the Telecommunications Act of 1996

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**DIRECT TESTIMONY
OF
JAMES C. FALVEY
ON BEHALF OF
AMERICAN COMMUNICATIONS SERVICES, INC.
AND ITS SUBSIDIARIES**

March 27, 1998

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is James C. Falvey and my position is Vice President - Regulatory
3 Affairs of American Communications Services, Inc. My business address is 131
4 National Business Parkway, Suite 100, Annapolis Junction, Maryland 20701.

5 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**
6 **BACKGROUND.**

7 A. I joined ACSI in May 1996 as Vice President - Regulatory Affairs. Prior to
8 joining ACSI, I had six years of experience in the private practice of law. Most
9 recently, I was associated with the Washington, D.C. law firm of Swidler &
10 Berlin, where I represented competitive local exchange providers, competitive
11 access providers, cable operators, and other common carriers in state and
12 federal proceedings. Prior to my employment at Swidler & Berlin, I was an
13 associate in the Washington office of Johnson & Gibbs where I practiced
14 antitrust litigation. I am a *cum laude* graduate of Cornell University and
15 received my law degree from the University of Virginia School of Law. I am
16 admitted to practice law in the District of Columbia and an inactive member of
17 the Virginia Bar.

18 **Q. PLEASE BRIEFLY DESCRIBE THE OPERATIONS OF ACSI AND ITS**
19 **OPERATING SUBSIDIARIES.**

20 A. ACSI is a provider of integrated local voice and data communications services to
21 commercial customers primarily in mid-size metropolitan markets in the south
22 and southwest United States. ACSI is a rapidly growing CLEC, supplying

1 businesses with advanced telecommunications services through its digital
2 SONET-based fiber optic local networks.

3 ACSI is a Delaware corporation that is traded publicly on the NASDAQ
4 market under the symbol "ACNS". ACSI, through its operating subsidiaries,
5 including ACSI Local Switched Services, Inc., American Communication
6 Services of Chattanooga, Inc. and American Communication Services of
7 Knoxville, Inc., already has constructed and is successfully operating networks
8 and offering dedicated and switched services in many states. At present, ACSI
9 has 32 operational networks, 16 Lucent Technology 5ESS Switches installed and
10 44 ATM nodes.

11 **Q. PLEASE DESCRIBE ACSI'S OPERATIONS IN TENNESSEE.**

12 A. ACSI has constructed a digital SONET-based fiber optic network connecting the
13 major commercial area in Chattanooga. Currently, ACSI is providing local
14 service exclusively by reselling the telecommunications services of BellSouth
15 Telecommunications, Inc. ("BellSouth").

16 **Q. WHAT SERVICES DOES ACSI PROVIDE IN TENNESSEE?**

17 A. ACSI currently provides, or is actively implementing plans to provide, a wide
18 range of local telecommunications and data services, including dedicated and
19 private line, high-speed data service solutions, including IP switching and
20 managed services, local switched voice services, and Internet services.

21 **Q. HAS ACSI ENTERED INTO AN INTERCONNECTION AGREEMENT**
22 **WITH BELL SOUTH TELECOMMUNICATIONS, INC. ("BELL SOUTH")**
23 **IN TENNESSEE?**

1 A. Yes. ACSI and BellSouth finalized an interconnection agreement which provides
2 for mutual traffic exchange and access to unbundled network elements, including
3 unbundled loops, on July 25, 1996. This agreement was amended on October 17,
4 1996 to resolve unbundled loop pricing issues. The Tennessee Regulatory
5 Authority ("TRA") has approved the ACSI/BellSouth Interconnection Agreement
6 ("ACSI Interconnection Agreement"). ACSI and BellSouth also entered into a
7 resale agreement in December 1996.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony is to present ACSI's response to BellSouth's
10 Statement of Generally Available Terms and Conditions ("Statement") and
11 BellSouth's apparent position that it will soon meet the requirements of the
12 competitive checklist contained in Section 271(c)(2)(B) of the Communications
13 Act of 1934, as amended (the "Act"). Since April, 1997 ACSI has been reselling
14 local exchange service to a small number of business customers in Tennessee.
15 Under the Telecommunications Act of 1996, competition from a reseller is not
16 sufficient to constitute competition in the market nor is it adequate to assess
17 BellSouth's procedures in place for the implementation of facilities-based
18 competition for the purposes of Section 271. Moreover, ACSI's experience in
19 other BellSouth states demonstrates the BellSouth has great strides to make in
20 implementing local competition.

21 ACSI has become a facilities-based provider of local exchange service to a
22 small number of business customers in isolated pockets in other states, but it is not
23 a facilities-based provider in Tennessee at this time. ACSI's experience in dealing

1 with BellSouth in the local exchange markets demonstrates that BellSouth still has
2 substantial progress to make in opening the local markets to competition before
3 BellSouth's entry into in-region long distance service would be in the public
4 interest. Based upon ACSI's experience, BellSouth's request to provide in-region
5 interLATA service is premature. The TRA should withhold support, under its
6 consulting role pursuant to Section 271 of the Act, for BellSouth's anticipated
7 FCC application to provide in-region interLATA service until BellSouth has met
8 the 14 points and significant facilities-based competition has developed and the
9 necessary safeguards are in place to ensure that local competition will continue to
10 develop.

11 **Q. AS A THRESHOLD MATTER, WHAT STANDARD SHOULD THE TRA**
12 **APPLY IN DETERMINING WHETHER BELL SOUTH HAS FULFILLED**
13 **THE REQUIREMENTS OF SECTION 271 OF THE ACT?**

14 A. The Commission should not endorse BellSouth's compliance with Section 271 of
15 the Act for reentry into the long distance market until actual, effective, facilities-
16 based competition exists in both the residential and business markets for local
17 exchange services and exchange access services in the State of Tennessee. This
18 standard requires BellSouth not only to have entered into interconnection
19 agreements but also to have implemented such agreements successfully. The
20 public interest standard also requires that BellSouth not engage in activities that
21 impede the development of local competition in Tennessee. Due to a lack of any
22 significant facilities-based competition at this time, BellSouth cannot make this
23 showing today.

1 **Q. DO YOU BELIEVE THAT THE SO-CALLED TRACK B (Section**
2 **271(c)(1)(B)) IS APPROPRIATE?**

3 A. No. Despite various creative interpretations of Track B by RBOCs across the
4 country, the language of Section 271(c)(1)(B) is only available under certain very
5 limited circumstances that do not apply here. The plain language of Section
6 271(c)(1)(B) states that BellSouth can pursue Track B if "no such provider has
7 requested the access and interconnection described in subparagraph (A)"

8 Because ACSI and several other carriers have requested access and
9 interconnection, Track B simply does not apply. The development of actual,
10 effective facilities-based local competition must therefore be the measure of
11 BellSouth's entry into long distance under Track A. The FCC and the United
12 States Court of Appeals for the District of Columbia Circuit have rejected
13 BellSouth's interpretation of Track A and Track B, and endorsed that of ACSI and
14 other CLECs.¹

15 **Q. DOES ACSI OPPOSE BELL SOUTH'S REENTRY INTO THE MARKET**
16 **FOR IN-REGION INTERLATA SERVICES AT THIS TIME?**

17 A. Yes. BellSouth's reentry at this time could have devastating and irreversible
18 effects on the development of competition in local markets. Competition in the
19 markets for local exchange and exchange access services in Tennessee is still
20 nascent. Furthermore, safeguards to ensure the development of competition do not
21 exist. The first order of business should be the development of safeguards

¹ SBC Communications, Inc. v. FCC (case no. 97-1425).

1 necessary to implement competition — not support for the Section 271
2 application.

3 The TRA should err on the side of caution in permitting BellSouth's entry
4 into in-region long distance. Once Section 271 approval is granted, it will be
5 impossible to revoke that approval without serious disruption to Tennessee
6 consumers. Every customer that ACSI gains is a customer that BellSouth loses.
7 ACSI, therefore, urges the TRA to consider carefully the fact that BellSouth has
8 little incentive to cooperate with its potential competitors, including ACSI, other
9 than its desire to reenter the long distance market. The ideal result for Tennessee
10 consumers is to maximize competition in both the local and long distance
11 markets. This will only occur if competition is first permitted to develop in the
12 local markets currently dominated by BellSouth, and then one additional
13 competitor, BellSouth, is permitted to enter the long distance market.

14 BellSouth's focus on the benefits to consumers of increased long distance
15 competition as the sole criterion of public interest is misplaced and has been
16 categorically rejected by the Department of Justice and the FCC.² There is no
17 question that Tennessee consumers will receive some benefit when BellSouth
18 enters the in-region long distance market. The substantial detriment that
19 premature long distance entry would have on local competition greatly outweighs
20 the minimal impact of merely delaying the addition of another major long distance
21 competitor in Tennessee. Therefore, until actual and effective competition exists

² Evaluation of the U.S. Dept. of Justice, *In the Matter of Application by BellSouth Corp., et al. For Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, at Section III.C (December 10, 1997).

1 in the residential and business markets for local exchange and exchange access
2 services in most areas of the state, BellSouth's reentry into long distance is
3 premature and contrary to the public interest. Accordingly, ACSI urges the TRA
4 to withhold support for BellSouth's anticipated FCC application under Section
5 271 of the Act.

6 **Q. ON WHAT GROUNDS DO YOU CLAIM THAT LOCAL COMPETITION**
7 **HAS NOT YET DEVELOPED ADEQUATELY IN TENNESSEE?**

8 A. Only a few markets in Tennessee have competitive access providers ("CAPs") or
9 CLECs and, even in these markets, their networks are not geographically
10 comprehensive. For example, ACSI's current Tennessee presence is limited to
11 Chattanooga. This network is further limited to the central business district.
12 Thus, even where we have a network, there will be customers without ready
13 access to our facilities.

14 **Q. WHY ARE CLEC NETWORKS LIMITED TO THOSE AREAS?**

15 A. Network construction is a time-consuming, complex and expensive undertaking.
16 Although ACSI is expanding its networks at a phenomenal pace, it cannot
17 possibly replicate the BellSouth network in the short term. BellSouth built its
18 ubiquitous local network over the course of a century with a monopoly revenue
19 stream derived from ratepayer dollars, while CLECs have existed for only a few
20 years and have been funded as competitive start-up enterprises. Furthermore,
21 BellSouth's unreliable unbundled loop processes have to date made it difficult for
22 ACSI to serve customers not located on ACSI's network. Moreover, the Eighth
23 Circuit required that CLECs must collocate in order to purchase unbundled loops.

1 Until the TRA takes further action, CLECs are severely limited in the number of
2 customers they can service profitably.

3 **Q. IS THE REACH OF ACSI'S SYSTEM LIMITED ONLY BY ITS**
4 **NETWORK DEVELOPMENT?**

5 A. No. In addition to being unable to service most geographic areas of the state due
6 to a lack of network facilities, ACSI does not provide local services to residential
7 customers in Tennessee. Indeed, ACSI anticipates that it will not be able to
8 provide local services to residential customers for the foreseeable future.

9 **Q. IS ACSI TECHNICALLY UNABLE TO PROVIDE LOCAL SERVICES**
10 **TO RESIDENTIAL CUSTOMERS IN TENNESSEE?**

11 A. No. From a business perspective, ACSI is unable to provide local service to
12 residential customers largely because BellSouth's pricing policies have created a
13 price squeeze that makes it economically infeasible to serve the residential
14 market.

15 **Q, WHAT IS IT ABOUT BELL SOUTH'S PRICING POLICIES THAT**
16 **EFFECTIVELY PRECLUDES ACSI FROM PROVIDING LOCAL**
17 **SERVICE TO RESIDENTIAL CUSTOMERS?**

18 A. In order to serve residential customers with its own facilities, ACSI must purchase
19 local loops and related facilities as unbundled network elements from BellSouth.
20 While ACSI will be able to overbuild and thereby replace BellSouth's interoffice
21 transport facilities, tandem switching, local switching and signaling over time,
22 there is no economical substitute for the ubiquitous local loop constructed by
23 BellSouth with a century-long monopoly revenue stream. The out-of-pocket cost

1 to ACSI of purchasing these loops from BellSouth as unbundled network
2 elements constitute a direct cost of service to ACSI. ACSI has additional costs
3 that it must bear in order to provide end-to-end service to the end user. ACSI
4 must be able to recover its loop and other costs in its retail pricing. Significantly,
5 in order to compete, ACSI must also offer service at rates competitive with those
6 of BellSouth. Unfortunately, BellSouth has demanded a price for unbundled
7 loops and associated facilities that exceeds the corresponding price charged by
8 BellSouth for residential retail local exchange services.

9 Specifically, ACSI must pay the following for unbundled network
10 elements: \$18.00 for 2-wire loops, \$0.30 for the cross connect, and \$2.25 per loop
11 for interim number portability. Thus, ACSI's total out-of-pocket cost to BellSouth
12 per line is \$20.55, even *before* ACSI pays for its own network and overhead. In
13 comparison, BellSouth's residential retail price in urban areas is almost \$10 less.
14 Obviously, *since the BellSouth unbundled price to ACSI exceeds BellSouth's*
15 *residential retail prices*, ACSI --or any other competitive carrier -- has no
16 prospect of providing service in the residential market at competitive rates.

17 **Q. WHAT WOULD HAVE TO HAPPEN TO OPEN THE RESIDENTIAL**
18 **MARKET IN TENNESSEE TO LOCAL SERVICE?**

19 A. BellSouth would have to lower its prices for unbundled loops substantially. ACSI
20 believes that permanent, deaveraged cost-based rates are necessary in order for
21 CLECs to begin to consider offering facilities-based service in the residential
22 market. Once market participants have available cost-based residential loop rates
23 -- which necessarily include deaveraged unbundled loop rates -- they can

1 determine whether residential competition is economically feasible. The TRA
2 cannot sign off on BellSouth's Section 271 application at least until the costing
3 docket is completed.

4 **Q. HAS ANY OTHER BELLSOUTH REGION COMMISSION FOUND THAT**
5 **PERMANENT COST-BASED RATES MUST BE ESTABLISHED PRIOR**
6 **TO SECTION 271 REENTRY?**

7 A. Yes. The Georgia Commission found that permanent cost-based rates must be
8 established before it could recommend that BellSouth should be permitted to
9 reenter the in-region long distance market. (See Georgia Public Service
10 Commission Order rejecting BellSouth's Statement of Generally Available
11 Terms and Conditions, dated March 20, 1997, Docket No. 7253-U).

12 **Q. DO CONDITIONS EXIST THAT ALSO PREVENT YOU FROM**
13 **COMPETING EFFECTIVELY IN THE BUSINESS MARKET?**

14 A. Yes. In addition to the limited reach of our network, which I discussed
15 previously, we have experienced considerable difficulty in implementing the
16 ACSI Resale and Interconnection Agreements in Tennessee, as well as Georgia,
17 Alabama, Kentucky, and other BellSouth states.

18 **Q. WHAT PROBLEMS HAS ACSI EXPERIENCED?**

19 A. ACSI's efforts to make competitive alternatives available to Georgia consumers
20 have been undermined by significant problems with the provisioning of
21 unbundled loops which have delayed, or precluded altogether, ACSI's attempt to
22 bring its services to market. This problem is sufficiently severe that ACSI has

1 been forced to file two separate formal complaints against BellSouth, one before
2 the Georgia Public Service Commission and one before the Federal
3 Communications Commission, based on BellSouth's continuing failure to
4 provision unbundled loops to ACSI on a timely basis pursuant to the terms of
5 the ACSI Interconnection Agreement. These complaints are in addition to a
6 complaint ACSI filed with the FCC based upon BellSouth's discriminatory
7 application of non-recurring charges for access service rearrangements.

8 The principal problem is the difficulty we have experienced in obtaining unbundled
9 loops, provisioned on a timely basis. Our customers have experienced severe
10 service disruptions as a result of BellSouth's inability to cut over unbundled
11 loops. This could potentially damage (and has likely already damaged) ACSI's
12 reputation as a provider of high quality telecommunications services as well as
13 its ability to market to new customers in ACSI's markets.

14 **Q. PLEASE DESCRIBE THE PROBLEMS THAT YOU HAVE**
15 **EXPERIENCED IN BELL SOUTH'S PROVISIONING OF UNBUNDLED**
16 **LOOPS.**

17 **A.** In November and December 1996, ACSI submitted its initial orders for
18 unbundled loops in Columbus, Georgia. On these orders, BellSouth failed to
19 comply with the installation standards required by Section IV.D of the ACSI
20 Interconnection Agreement. Severe service disruptions resulted to local
21 exchange customers that had selected ACSI as their carrier.
22 On November 19 and 20, 1996, ACSI placed its first three orders for unbundled

1 loops in Columbus, Georgia, requesting cutover of the customers to ACSI on
2 November 27, 1996. The cutover of these customers involved conversion of
3 one or two POTS lines, the simplest possible cutover. Each of the three orders
4 included an order for SPNP. ACSI submitted each of these orders in
5 accordance with the process established in the ACSI Interconnection Agreement
6 and BellSouth guidelines. These orders were confirmed by BellSouth on
7 November 25 and 26, 1996. BellSouth's processing of these orders completely
8 failed to comply with the cutover standards required by Section IV.D of the
9 ACSI Interconnection Agreement.

10 In general, the processing of these orders was not coordinated between
11 ACSI and BellSouth, as the ACSI Interconnection Agreement contemplated,
12 because BellSouth *unilaterally* administered the cutover without contacting
13 ACSI. Moreover, BellSouth failed to install properly the unbundled loops ACSI
14 requested, and caused severe disruptions in service to the local exchange
15 customers that had selected ACSI as their carrier. Two of ACSI's initial three
16 customers were disconnected entirely for several hours. No outgoing calls
17 could be placed, and customers calling the number received an intercept
18 message indicating that the number no longer was in service. Service was
19 disconnected for these two customers for 4-5 hours each, or approximately 50 to
20 60 times longer than permitted under the ACSI Interconnection Agreement.
21 Even after the improper disconnection was remedied and the intercept message
22 was removed for these two customers, BellSouth failed to implement SPNP as

1 ordered by ACSI, causing further delay and disruption to ACSI's first new
2 customers. As a result, these customers could not receive any incoming calls on
3 their lines. As to the third customer, his service was completely disconnected
4 for the entire day of Wednesday, November 27, 1996.

5 **Q. HOW DID ACSI REACT?**

6 A. On December 3, ACSI held back orders to protect its reputation. But for
7 BellSouth's provisioning problems, these orders would have been processed on
8 a timely basis. For example, by December 23, 1996, ACSI had received
9 customer orders for 113 access lines. Assuming a five day turnaround, these
10 113 access lines would have been cut over by December 28, 1996. In fact,
11 BellSouth had cut over far fewer lines by that date.

12 Each day of delay in having unbundled loops installed jeopardized our
13 ability to retain the customers we have, not to mention our ability to attract new
14 customers. Moreover, BellSouth's failure to process our orders allowed
15 BellSouth to retain customers that had signed up for ACSI service.

16 **Q. DOES THE ACSI INTERCONNECTION AGREEMENT INCLUDE**
17 **REQUIREMENTS FOR THE PROVISIONING OF UNBUNDLED**
18 **LOOPS?**

19 A. Yes. The ACSI Interconnection Agreement provides, among other things, that
20 BellSouth will: (1) provide mechanized order processing procedures
21 substantially similar to current procedures for the ordering of special access
22 services (Section IV.C.2); (2) install unbundled network elements in a

1 timeframe equivalent to that which BellSouth provides for its own local
2 exchange services (Section IV.D.1); (3) establish a seamless customer cutover
3 process in which ACSI and BellSouth will agree to a cutover time 48 hours in
4 advance, the conversion will occur within a designated 30 minute window, and
5 service to the customer will be interrupted for no longer than 5 minutes (Section
6 IV.D.2, D.3, D.6); and (4) coordinate implementation of Service Provider
7 Number Portability ("SPNP") to coincide with loop installation (Section
8 IV.D.8.).

9 **Q. HOW DID BELL SOUTH'S PERFORMANCE IN PROVISIONING THESE**
10 **UNBUNDLED LOOPS IMPACT ACSI'S MARKETING OF ITS SERVICES?**

11 A. ACSI customers routinely ask questions about ACSI's ability to deliver service.
12 While ACSI has been able to reassure customers and is signing up new
13 customers in multiple markets every day, BellSouth's provisioning problems
14 have not helped ACSI.

15 **Q. IS THE PROBLEM RESOLVED?**

16 A. No. The basic problem is that BellSouth still cannot -- or will not -- install
17 loops for ACSI consistent with the Agreement's 5 minute interval. In fact,
18 BellSouth has yet to provide satisfactory statistics as to what those intervals are.
19 While BellSouth claims that 98% of its loops are cutover in 15 minutes or less,
20 this is a misleading statistic. First, the Agreement requires a 5-minute cutover.
21 At 15 minutes, BellSouth is penalized. Second, the 15 minutes does not include
22 number portability. BellSouth has never reported the percentage of loops

1 cutover in 5 minutes or less. ACSI's unbundled loop cutover intervals are still
2 completely unsatisfactory. Cutover intervals of over two hours are still routine
3 occurrences. ACSI has also experienced extensive outages across virtually all
4 of its customers in Columbus, Georgia due to a failure of BellSouth's number
5 portability systems. The prevalence of BellSouth system failures in Georgia,
6 Alabama, and Kentucky is completely unacceptable at this time. The TRA
7 should not recommend Section 271 approval until BellSouth's systems are
8 significantly improved, and facilities-based competition takes root in Tennessee.

9 **Q. IS BELL SOUTH CURRENTLY PROVISIONING THE SMALL NUMBER**
10 **OF LOOPS ORDERED BY ACSI IN GEORGIA?**

11 A. Yes. It is unclear, however, whether BellSouth's procedures are reliable and
12 capable of handling the increased volume of loops as ACSI and other CLECs
13 increase their marketing efforts. Although BellSouth has processed certain
14 orders without incident, BellSouth's refusal to give adequate assurances that it
15 will be able to comply with the provisioning standards set forth in the ACSI
16 Interconnection Agreement makes it impossible for ACSI to be confident that
17 BellSouth has a reliable system in place to unbundle the local loop. For
18 example, in addition to further ACSI volume in Columbus, BellSouth must
19 handle loop orders from Montgomery, Louisville, Birmingham, New Orleans,
20 Jacksonville, Greenville, and possibly additional ACSI cities by year's end.
21 BellSouth's regionalized ordering and provisioning systems must also handle
22 significant volumes of loop orders from other CLECs. Before ACSI can

1 effectively compete against BellSouth, it must be able to order and have installed
2 a significant volume of unbundled loops on a reliable basis. This includes the
3 conversion of resale customers to ACSI's facilities. To date, BellSouth has
4 demonstrated no capability of handling high volumes of access lines. Indeed,
5 ACSI has every indication that BellSouth still has not put systems into place for
6 provisioning some unbundled loops -- such as ADSL and HDSL loops -- that by
7 law should have been in place months ago.

8 Although ACSI is working closely with BellSouth and hopes its
9 processes will improve, ACSI's experience in Georgia, Alabama, and Kentucky
10 leads us to believe that BellSouth's procedures are not reliable. Consequently,
11 ACSI has no reason to expect that BellSouth will be able to cut over scores of
12 customers a day once ACSI's services establish even a modest foothold in
13 Tennessee. Under these circumstances, the TRA's support for BellSouth's
14 Section 271 Application would be premature.

15 **Q. ARE THERE ANY NETWORK ELEMENTS THAT CLECS NEED**
16 **TODAY IN ORDER TO ENSURE THE RAPID DEVELOPMENT OF**
17 **LOCAL COMPETITION IN TENNESSEE?**

18 **A.** Yes. CLECs need to be able to purchase at TELRIC rates from BellSouth an
19 unbundled loop combined with local transport as single network element.

20 **Q. BELL SOUTH IS NOT PROVIDING THE LOOP COMBINED WITH**
21 **LOCAL TRANSPORT TO CLECS TODAY?**

22 **A.** No. BellSouth has refused to offer to CLECs an unbundled loop combined with

1 local transport based on the Eight Circuit Court of Appeals decision of the FCC
2 Local Competition Order. Because the Eighth Circuit held that ILECs were not
3 required under the Act to perform the actual recombining of unbundled
4 elements, BellSouth has refused to offer the loop combined with local transport
5 as an UNE. Thus, ACSI must purchase the unbundled loop and local transport
6 as separate elements today, and then recombine them by collocating in each
7 BellSouth end office in order to serve our customers. This raises the CLECs'
8 cost of providing service and retards the rapid development of competition in the
9 local markets in Tennessee.

10 **Q. CAN THE TRA DO ANYTHING TO LOWER THE COSTS OF ENTRY**
11 **INTO THE LOCAL MARKET?**

12 A. Yes. The TRA should order BellSouth to provide the unbundled loop combined
13 with local transport to CLECs as a single network element at TELRIC prices.
14 This would encourage the development of local competition, and substantially
15 reduce the costs of entry incurred by CLECs attempting to compete with
16 BellSouth in the local market.

17 **Q. HAS BELL SOUTH PREVIOUSLY APPLIED TO THE FCC FOR**
18 **AUTHORITY TO PROVIDE IN-REGION INTERLATA SERVICES?**

19 A. Yes. The TRA should look to the recent orders of the FCC rejecting BellSouth's
20 premature applications from South Carolina and Louisiana.³

³ Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208 (December 24, 1997) ("South Carolina Order"); Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corporation, et al. Pursuant*

1 **Q. WHAT WERE THE REASONS THE FCC REJECTED BELL SOUTH'S**
2 **APPLICATIONS IN SOUTH CAROLINA AND LOUISIANA?**

3 A. While I do not attempt to list every specific reason cited by the FCC in the *South*
4 *Carolina and Louisiana Orders*, in sum, the FCC found that BellSouth failed to
5 meet the competitive checklist because it failed to show that it currently provides
6 to competing carriers nondiscriminatory access to its operations support systems
7 ("OSS"). BellSouth further failed to demonstrate that it provides competitors
8 access to its OSS that is equivalent to that which BellSouth provides to itself in
9 connection with its own retail telephone services. Moreover, BellSouth failed to
10 show that it is providing access to unbundled network elements in a manner that
11 allows competing carriers to combine these elements to provide service.
12 Specifically, the FCC found that BellSouth's Statement failed to include definite
13 terms and conditions addressing the manner in which competitors may combine
14 network elements. The FCC also focused on BellSouth's limited experience with
15 physical collocation, and uncertainty as to how a CLEC could use virtual
16 collocation to recombine unbundled elements. The FCC also concluded that
17 BellSouth's failure to offer contract service arrangements ("CSAs") at a wholesale
18 discount to competing carriers is in violation of the Act and the FCC's
19 implementing regulations.

20 **Q. IS BELL SOUTH'S TENNESSEE SGAT MATERIALLY**
21 **DISTINGUISHABLE FROM THE SGAT OF SOUTH CAROLINA AND**
22 **LOUISIANA, WHICH THE FCC HAS REJECTED?**

to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA

1 A. No. In fact, the SGAT filed in Tennessee is substantially the same as the SGATs
2 previously filed in South Carolina and Louisiana. As stated previously, in its
3 *South Carolina and Louisiana Orders*, the FCC found, among other reasons, that
4 BellSouth's OSS were inadequate in that the systems are discriminatory and do
5 not ensure the provisioning of services at parity with BellSouth. Specifically, the
6 FCC noted "we conclude that BellSouth has not demonstrated that the access to
7 certain OSS functions that it provides to competing carriers for pre-ordering,
8 ordering and provisioning of resale services and preordering of unbundled
9 elements is equivalent to the access it provides to itself."⁴

10 **Q. WHY IS THAT FINDING PARTICULARLY IMPORTANT TO THE**
11 **TENNESSEE APPLICATION?**

12 A. Because BellSouth's OSS is a region-wide system deployed throughout
13 BellSouth's nine-state territory including Tennessee. The FCC has recently
14 reviewed BellSouth's OSS functions when it evaluated BellSouth's South
15 Carolina and Louisiana applications and found the OSS deficient as late as
16 February of this year. In the *Louisiana Order*, the FCC stated that it would use
17 the determinations it made about BellSouth's OSS in its *South Carolina Order* as
18 a starting point, "then review any new data or information that BellSouth has
19 provided in the context of its Louisiana application and decide whether the new
20 information justifies a different result."⁵

Services in Louisiana, CC Docket No. 97-231 (February 4, 1998) ("*Louisiana Order*").

⁴ *South Carolina Order*, at paragraph 88.

⁵ *Louisiana Order*, at paragraph 21.

1 **Q. HAS BELL SOUTH UPGRADED ITS OSS SINCE THE FCC DEEMED**
2 **THEM NON-CHECKLIST COMPLIANT?**

3 A. BellSouth has not addressed the most significant failings of its OSS.
4 Enhancements to BellSouth's OSS are necessary before BellSouth can provide
5 OSS access to CLECs in parity with BellSouth's internal access. Some of these
6 enhancements will not be completed much before the end of the year (e.g.,
7 BellSouth's proposed Application Program Interface ("API")). The lack of
8 integration of BellSouth's pre-ordering and ordering interfaces – the function
9 provided by API – was one of the key flows highlighted by the FCC. Even at that
10 time, several months will be required for testing the enhancements and obtaining
11 experience with actual commercial usage before a determination can be made as
12 to whether BellSouth has met the requirements of the Act. There is no certainty
13 that API will address all outstanding problems. In the meantime, CLECs must
14 cope with inferior systems and the uncertainty that current efforts to implement
15 BellSouth OSS may be wasted when BellSouth makes its enhanced products
16 available. Moreover, EDI Version 7.0 has just been made available and will
17 likewise require a lengthy implementation period to achieve actual commercial
18 usage.

19 **Q. HAVE BELL SOUTH'S LOCAL CARRIER SERVICE CENTERS BEEN**
20 **INDEPENDENTLY EVALUATED?**

21 A. Yes. DeWolfe, Boberg & Associates, Inc. ("DeWolfe") performed a
22 comprehensive audit of BellSouth's LCSC in both Atlanta and Birmingham.⁶ The

⁶ Analysis Conducted for BellSouth - LCSC, Atlanta, GA & Birmingham, AL (March 3, 1997 - March

1 purpose was to identify and quantify any opportunities that might exist to improve
2 the operations as BellSouth's volume and manpower ramps up to meet the
3 forecasted volume.

4 **Q. WHAT CONCLUSIONS DID DeWOLFE REACH?**

5 A. It concluded that BellSouth supervisors spent very little time guiding, coaching,
6 or training their people. The supervisors also had very limited control over the
7 work flows and processes. DeWolfe's diagnostic assessment indicated that
8 BellSouth's supervisory level has a poor understanding of the concepts of
9 proactive supervision, organizational development, and systems utilization.
10 Further, DeWolfe determined that BellSouth's LCSC management systems
11 contain fragments of most of the basic elements required to control an order entry
12 operation. The LCSC employees are not effectively trained to maximize their
13 skills and productivity. Dewolfe found that:

14 Our evaluation of your [BellSouth] basic work processes in both
15 resale and unbundled, indicated that they lack process
16 documentation, compliance, and the accuracy to provide a
17 predictable, high quality output. We repeatedly observed
18 employee skills deficiency and errors which is negatively
19 impacting both productivity and quality. Your current level of
20 quality is unnecessarily low. Due to numerous operating problems,
21 training deficiencies and process non-compliance, this level of
22 quality is inflating your operating costs per order, and contributing
23 to delays in customer service. The current level of errors is
24 alarming due to the low volume level and the fact that current
25 employees whom we studied have been on their current jobs form
26 four months to a year. These quality problems and errors are
27 recurring several times per day without supervisory awareness or
28 corrective action.⁷
29

13, 1997).

⁷ Id., at item 6 of Overview.

1 **Q. IS ACSI'S EXPERIENCE WITH THE LCSC CONSISTENT WITH**
2 **THIS AUDIT?**

3 A. Yes. While Bell claims to have fixed all its problems with the LESC,
4 ACSI has problems with failure to notify of jeopardies, winbacks, and
5 resale conversions. Attached as Exhibit A are recent winback notices from
6 BellSouth. As you can see, they arrive after the date of the BellSouth
7 conversion. This is not acceptable.

8 **Q. PLEASE DESCRIBE ACSI'S CURRENT IMPLEMENTATION OF**
9 **BELLSOUTH OSS.**

10 A. ACSI gained LAN-to-LAN access to BellSouth's web interface for its Local
11 Exchange Navigation System ("LENS") on January 8, 1998. ACSI is in the
12 process of testing the PC EDI Harbinger software. BellSouth's introduction of a
13 series of OSS interfaces has forced ACSI to adopt a conservative approach to
14 implementation because a new entrant such as ACSI cannot afford the wasted
15 expenditures that result from such rapid obsolescence. ACSI is also interested in
16 additional software that will make PC EDI and LENS more compatible to avoid
17 the current difficulties associated with operating these two systems in tandem.

18 **Q. WHAT IS THE STANDARD USED TO EVALUATE BELLSOUTH'S OSS**
19 **INTERFACES OFFERED TO CLECS.**

20 A. The FCC, as indicated above, in interpreting the Act,⁸ has promulgated rules that
21 require ILECs to provide wholesale services in parity with services the ILEC

⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, August 8, 1996 ("*Local Competition Order*").

1 provides to its own end-use retail customers.⁹ OSS systems are unbundled
2 elements that allow CLECs access to various BellSouth computer systems
3 necessary to serve customers. Properly functioning OSS allow a carrier to
4 receive, process and install customers' orders promptly and accurately. To ensure
5 that all carriers are able to compete fairly for customers, the FCC has consistently
6 emphasized that the incumbent LEC must give its competitors nondiscriminatory
7 access to the functions of its OSS.¹⁰ In its Louisiana Order, the FCC explained:

8 [N]ew entrants must be able to provide service to their customers at a level
9 that matches the quality of the service provided by the incumbent
10 LEC. Because the incumbent LEC owns and controls its
11 operational support systems, competing carriers' entry into the
12 local market depends upon the incumbent LEC's willingness and
13 ability to make its OSS available in a nondiscriminatory manner.
14 A competing carrier that lacks access to operations support systems
15 equivalent to those the incumbent LEC provides to itself, its
16 affiliates, or its customers, will be severely disadvantaged, if not
17 precluded altogether, from fairly competing in the local exchange
18 market.¹¹
19

20 **Q. ARE THERE ANY PROBLEMS THAT MUST BE RESOLVED IF**
21 **BELLSOUTH'S OSS IS TO OFFER PARITY TO CLECS?**

22 A. Yes. Two problems are particularly significant because they highlight the
23 fundamental nature of the problems to be resolved. The first is the introduction of
24 EDI version 7.0, which was just delivered for March 16, 1998. The second is the
25 introduction of BellSouth's proposed Application Program Interface ("API") for
26 LENS, estimated to be complete sometime in late 1998. These enhancements will
27 begin to integrate two of the primary elements of OSS, ordering and preordering,

⁹ See, e.g., 47 C.F.R. Section 51.313(b).

¹⁰ *Local Competition Order*, 11 FCC Rcd at 15763; *South Carolina Order* at paragraph 82; *Louisiana Order* at paragraph 20.

¹¹ *Louisiana Order* at paragraph 20.

1 and are necessary to give CLECs the minimal tools and standardization necessary
2 to provide service to customers in Tennessee. As discussed below, API may be
3 the key to integrating certain of the OSS functions. Even when BellSouth makes
4 these enhancements available, it will take several months for the CLECs to test
5 the new systems and place them into actual commercial usage. Not until these
6 systems are utilized with live customers in the marketplace will it be possible to
7 determine whether BellSouth is providing OSS access at parity.

8 **Q. ARE BELL SOUTH'S LENS AND EDI SYSTEMS INTEGRATED TODAY**
9 **IN ANY MEANINGFUL WAY?**

10 A. No. Based on the demonstrations I have witnessed, BellSouth's current
11 preordering (LENS) and ordering (EDI) systems are not meaningfully integrated.
12 The FCC has recognized the lack of such integration as one of the grounds for
13 rejecting BellSouth's Section 271 applications in South Carolina and Louisiana.¹²
14 ACSI strongly disagrees with BellSouth's position that integration is the
15 responsibility of the CLECs. Performing such integration would be particularly
16 burdensome on the CLECs considering the proprietary nature of the LENS
17 system, the changes that have been made to LENS to date, and the anticipated
18 new versions of LENS and EDI. The FCC has categorically rejected BellSouth's
19 position that its systems must be integrated entirely by new entrant CLECs, such
20 as ACSI.¹³ BellSouth must provide the information necessary for CLECs to
21 achieve parity, and CLEC systems must be placed into use by CLECs. The
22 characteristics of API may make such integration easier for the CLECs; however,

¹² *South Carolina Order* at Paragraph 155; *Louisiana Order* at paragraph 49.

1 at this time, LENS API has not even been designed. CGI has critical security and
2 robustness short comings. Integration of ordering and preordering by BellSouth is
3 vital to ACSI's ability to serve customers in Tennessee. If BellSouth is unwilling
4 or unable to provide integrated systems (and it could license its existing systems
5 to CLECs), BellSouth must, by the FCC orders, at least be required to implement
6 API to reduce the burden of such integration on the CLECs.

7 **Q. WOULD THE INTEGRATION BY BELL SOUTH OF ORDERING AND**
8 **PREORDERING GUARANTEE THAT BELL SOUTH ACHIEVES**
9 **PARITY WITH ITS OSS SYSTEMS?**

10 A. Not necessarily. A recent side-by-side comparison of BellSouth's OSS for
11 CLECs and BellSouth's internal systems demonstrated that BellSouth's systems
12 are superior in many respects. It was clear from this comparison that BellSouth's
13 internal systems gave far superior access than the OSS BellSouth provides for
14 CLECs. Furthermore, the simplest solution would be for the TRA to require
15 BellSouth to allow CLECs to use the same interface that BellSouth uses internally
16 for its own customers. BellSouth has refused to provide such access. BellSouth
17 claims that its systems contain proprietary "marketing" information. Yet they
18 have never explained what that information is or why access to it could not be
19 limited to CLEC competitors.

20 **Q. DO BELL SOUTH'S MANUAL ORDERING PROCESSES ALLOW**
21 **CLECS TO PLACE ORDERS FOR COMPLEX SERVICES IN PARITY**

¹³ *South Carolina Order* at Paragraphs 164-166; *Louisiana Order* at paragraph 49.

1 **WITH BELLSOUTH'S OWN CAPABILITIES TO PLACE SUCH**
2 **ORDERS?**

3 A. Not at all. ACSI believes that BellSouth's manual processes for ordering
4 complex services do not begin to provide parity of ordering for CLECs. ACSI
5 bases its belief that CLEC ordering capabilities for complex systems are inferior
6 to BellSouth's internal capabilities on ACSI's experience with operations in the
7 BellSouth region where BellSouth is consistently able to process its own complex
8 orders faster than ACSI's.

9 **Q. CAN ACSI COMPETE EFFECTIVELY IF BELLSOUTH'S STANDARD**
10 **INSTALLATION INTERVALS EXCEED THOSE WHICH BELLSOUTH**
11 **AVERAGES FOR ITS OWN CUSTOMERS?**

12 A. No. Service quality is as or more important than price in the local market. If
13 an ILEC, such as BellSouth, can guarantee quicker installation, either by longer
14 standard intervals for CLECs or by expediting installation for its own
15 customers, then CLEC service will be viewed as inferior. BellSouth will use
16 such advantages to differentiate its product in the market. Notably, the problem
17 is even worse when ACSI is unable to meet promised delivery dates due to
18 BellSouth's inability or unwillingness to perform consistent with the
19 Telecommunications Act and under the ACSI Interconnection Agreement. The
20 fact that BellSouth can embarrass its competitor in front of customers whenever
21 it so chooses simply by dragging its feet is a very disturbing feature of the
22 emerging market structure for competitive local exchange services. There is no
23 significant, immediate, enforceable penalty in place today to act as a competitive

1 safeguard when such incidents occur. I see no remedy for this inherently
2 discriminatory circumstance other than specified provisioning intervals and a
3 strong enforcement role by state and federal regulatory authorities.

4 **Q. HAVE YOU ASKED BELL SOUTH TO PROVIDE PARITY IN**
5 **INSTALLATION INTERVALS?**

6 A. Yes. In Georgia, ACSI has asked BellSouth to agree to specific installation
7 intervals with prescribed penalties for failure to meet them. BellSouth has
8 refused.

9 **Q. WHAT IS THE RELEVANCE OF PERFORMANCE STANDARDS TO**
10 **THE SECTION 271 PROCESS?**

11 A. The policy mandate for performance standards, reporting, and self-enforcing
12 penalties is simple: once BellSouth enters the in-region long distance market,
13 CLECs must retain a guarantee that BellSouth services will become increasingly
14 efficient and that performance intervals will consistently improve. Performance
15 standards simply ensure improved performance after in-region long distance
16 entry is completed. Performance standards, reporting, and penalties are
17 therefore one of the many requirements that BellSouth must meet in order for
18 long distance entry to be in the public interest.

19 **Q. SHOULD THE TRA ESTABLISH PERFORMANCE STANDARDS?**

20 A. Yes.

21 **Q. WHAT BASIS SHOULD THE TRA USE TO ESTABLISH**
22 **PERFORMANCE STANDARDS?**

1 A. The ILECs' end user intervals should form the basis for certain performance
2 standards. Yet BellSouth has been unwilling to furnish this information in the
3 past. Despite repeated requests by ACSI, BellSouth has been unwilling to
4 provide ACSI with time frames and quality levels at the appropriate level of
5 detail that it performs for its own end users. Without a TRA requirement,
6 BellSouth clearly considers it to be in its best interest to shield this information
7 from competitive carriers. This suggests that -- contrary to BellSouth's lip
8 service to local competition in the Section 271 environment -- BellSouth is not
9 committed going forward to delivering service to CLECs that is at parity with
10 service to its own end users.

11 **Q. SHOULD THE TRA REQUIRE BELL SOUTH TO PERFORM**
12 **ACTIVITIES IN ITS WHOLESALE OPERATIONS IN TIME FRAMES**
13 **AND AT QUALITY LEVELS COMPARABLE TO THOSE THAT IT**
14 **PERFORMS FOR ITSELF?**

15 A. Yes. In order for competition to succeed in Tennessee, customers must perceive
16 that service from CLECs is of the same quality as services they have historically
17 received from ILECs. Customers know that they can receive this traditional
18 service quality by staying with the ILEC, or by switching back to the ILEC once
19 a switch is made to a CLEC. Therefore, services that ILECs sell to CLECS on
20 a wholesale basis must be offered in parity with services that the ILECs provide
21 to their own end user customers. Such parity is absolutely imperative if
22 competition is to succeed.

1 **Q. IS A PARITY STANDARD SUFFICIENT FOR TRA ENFORCEMENT OF**
2 **BELLSOUTH'S OBLIGATION TO OPEN ITS MARKETS TO LOCAL**
3 **COMPETITION?**

4 A. No. The parity standard by itself is too vague to serve as the basis for
5 enforcement. Enforcement requires an objective standard against which to
6 measure performance. The TRA should adopt detailed and specific service
7 quality and performance requirements to serve as a baseline for application to
8 BellSouth.

9 **Q. HOW CAN THE TRA ESTABLISH PERFORMANCE STANDARDS**
10 **THAT WILL ACHIEVE PARITY?**

11 A. The TRA should establish a requirement that BellSouth immediately produce on
12 the record to all interested parties *actual* intervals for all telecommunications
13 services to end users. These are the services that are required to be available
14 for resale under the Telecommunications Act of 1996, and the services that must
15 form the baseline for unbundled elements such as unbundled loops, as
16 recognized by the FCC in its *South Carolina and Louisiana Orders*.¹⁴

17 **Q. SHOULD THE TRA CONSIDER THE ADOPTION OF SPECIFIC**
18 **INTERVALS FOR INSTALLATION AND RESALE OF UNBUNDLED**
19 **LOOPS AND NUMBER PORTABILITY?**

20 A. Yes. The disruption in service experienced by a customer when switching from
21 incumbent LEC to CLEC service is one of the key determinants in a CLEC's

¹⁴ *Louisiana Order*, at paragraphs 20 *et. seq.*

1 ability to attract customers. Excessive disruptions on cutover will harm the
2 CLEC's reputation as a provider of quality services. The ACSI Interconnection
3 Agreement provides for a "standard" cutover time of five (5) minutes within a
4 thirty (30) minute window. The TRA should require BellSouth to perform loop
5 cutover, including number portability, at a scheduled time, in a standard time of
6 five (5) minutes. Resale intervals should be set on parity with BellSouth
7 intervals for transferring phone service.

8 **Q. WHY SHOULD LOOP CUTOVER INTERVALS INCLUDE NUMBER**
9 **PORTABILITY COMPLETION?**

10 A. This is the standard BellSouth agreed to voluntarily in the ACSI Interconnection
11 Agreement. Furthermore, cutting over a loop without the associated number
12 portability does not provide a customer with any useful service. There is no
13 technical reason why the coordination of number portability with the cutover of
14 an unbundled loop should add in any significant manner to the total interval for
15 an unbundled loop.

16 **Q. SHOULD THE TRA CONSIDER PROVISIONS FOR CORRECTIVE**
17 **ACTION TO BE TAKEN IN THE EVENT BELL SOUTH FAILS TO**
18 **COMPLY WITH ANY STANDARDS ADOPTED?**

19 A. Yes. ACSI's first preference is to implement self-enforcing penalties that
20 automatically are tolled when BellSouth fails to meet the TRA's performance
21 objectives. This is the result that will impose the least burden on the TRA and
22 its Staff. If BellSouth is not willing to commit to such self-enforcing penalties,

1 the TRA will have no alternative but to give its performance standards teeth by
2 including compulsory corrective action by the TRA if the standards are not met,
3 including penalties in the form of waived charges, escalating to civil penalties,
4 for failure to comply with the TRA's performance standards.

5 **Q. DOES ACSI PROPOSE A SET OF PERFORMANCE MEASUREMENTS**
6 **AT THIS TIME?**

7 A. ACSI has been working with other carriers for months to address this issue,
8 including the Local Competition Users Group (LCUG) (consisting of AT&T,
9 Sprint, MCI, LCI, and WorldCom). ACSI and other members of the
10 Association for Local Telecommunications Services (ALTS) have developed a
11 supplement to the LCUG proposal, which is attached as Exhibit B. The ALTS
12 supplement focuses on unbundled loops, collocation, and trunk blockage, all of
13 which have caused issues for CLECs in the BellSouth region. Collocation is
14 critical because it is necessary under BellSouth's Eighth Circuit approach in
15 order to recombine network elements. In fact, BellSouth's limited experience
16 with physical collocation was one of the reasons for the South Carolina Section
17 271 FCC rejection. Trunk blockage has also been an issue for ACSI in
18 Alabama and Kentucky.

19 **Q. ARE THERE OTHER PROVISIONING ISSUES THAT SHOULD BE**
20 **CORRECTED BEFORE BELL SOUTH IS PERMITTED IN-REGION**
21 **INTERLATA AUTHORITY?**

1 A. Yes. The TRA should require that BellSouth display the end-user retail rate
2 information on the customer service record ("CSR") when it is transmitted to a
3 CLEC. This is critical to the development of local competition in Tennessee.
4 Historically, BellSouth provided this information on its CSRs, it is only recently
5 that BellSouth determined that the CLECs should not have access to this
6 information on the CSR.

7 **Q. PLEASE EXPLAIN.**

8 A. In a resale environment, BellSouth's end-user prices are the CLECs' costs. The
9 largest cost to a CLEC of providing any resold service is the price offered by
10 BellSouth multiplied by the avoided cost discount. When a CLEC locates a
11 customer, it needs to know instantly what the pricing to that customer is so that it
12 can derive its costs. This would include certain promotional pricing, contract
13 pricing, and grandfathered pricing, which is required to form the basis of the
14 resale discount by the FCC.¹⁵ In ACSI's experience, the customer does not have
15 detailed knowledge of this pricing. In fact, BellSouth is the sole repository of this
16 information-information it has gathered by virtue of its century-old monopoly
17 franchise. BellSouth denies CLECs pricing information on its CSRs, and would
18 have CLECs sent on a wild goose chase using BellSouth's non-proprietary prices
19 to estimate the customer's current BellSouth pricing. Even if the TRA thought
20 that diverting CLEC resources in this manner was a good way to encourage
21 competition, as just noted, tariffed rates will not always yield actual rates. The

¹⁵ *Local Competition Order* at paragraph 944.

1 inevitable result would be billing discrepancies for CLEC customers, an
2 unacceptable result for Tennessee consumers.

3 **Q. ARE RETAIL RATES IN A CUSTOMER-SPECIFIC FORMAT AN**
4 **INTEGRAL PART OF BELL SOUTH'S RETAIL MARKETING**
5 **EFFORTS?**

6 A. Absolutely not. Whenever BellSouth wants to shield information of databases
7 from its CLEC competitors, it attaches the rubric of "marketing" information.
8 Given that the customer in question has told ACSI that it can look at its CSR and
9 pricing information, BellSouth is in no position to claim confidentiality based on
10 "marketing" prerogatives.

11 **Q. DOES BELL SOUTH PROVIDE RECIPROCAL COMPENSATION TO**
12 **ACSI AS REQUIRED BY POINT 13 OF THE CHECKLIST?**

13 A. No. BellSouth has broken ACSI's Agreement by failing to pay over \$1 million in
14 local compensation . It has also breached the Agreement by failing to report local
15 minutes and ignoring repeated Most Favored Nations Requests.

16 **Q. YOU TESTIFIED EARLIER THAT BELL SOUTH ALSO IS ENGAGING**
17 **IN ACTIVITIES THAT ARE IMPEDING ACSI'S ABILITY TO**
18 **COMPETE EFFECTIVELY IN THE MARKET FOR LOCAL SERVICES.**
19 **CAN YOU EXPLAIN?**

20 A. ACSI is seeking an emerging pattern of BellSouth activities seemingly intended
21 to lock in existing BellSouth local customers and prevent new entrants from
22 freely competing for their business. For example, BellSouth has been signing
23 up business customers to multi-year contracts before opening its local markets.

1 These customers will not be available for CLEC competition unless the TRA
2 grants CLECs a fresh look at such contracts.

3 BellSouth has established entrances to all office buildings in the
4 downtown business districts while ACSI and other companies have had great
5 difficulty in gaining access to some buildings, either due to limited space or
6 requests for large sums of money to enter the building. ACSI would encourage
7 the TRA to implement rules to require nondiscriminatory building access to all
8 certificated local exchange providers requesting such access.

9 BellSouth has also established an extremely troubling program that
10 appears intended to effectively lock CLECs out of major office buildings, office
11 parks, shopping centers and other similar locales. Specifically, BellSouth is
12 enticing property management companies to enter *exclusive* marketing
13 arrangements with BellSouth under which the property managers are paid
14 handsomely for promoting BellSouth's services to tenants of the property, and
15 for refusing to establish similar promotional agreements with CLECs. BellSouth
16 provided a copy of its Letter Agreement for Property Management Services in
17 response to a hearing request in a Georgia proceeding (Georgia PSC Docket
18 6863-U), a copy of which is attached to my testimony marked Exhibit C.

19 Under the terms of BellSouth's standard form Property Management
20 Services Agreement, BellSouth obtains access -- free-of-charge -- to building
21 entrance conduits, equipment room space and riser/horizontal conduits for
22 placement of BellSouth equipment and other telecommunications facilities

1 needed to serve building tenants. The property manager also commits to
2 designate BellSouth as the local telecommunications "provider of choice" to
3 building tenants and to promote BellSouth as such. Many building tenants may
4 not understand that they could choose to order service from a CLEC competitor.
5 In return, BellSouth agrees to establish a "Credit Fund" which the property
6 manager can use itself or distribute to tenants. The Credit Fund is usable to pay
7 for selected BellSouth services (*i.e.*, seminars, non-recurring installation
8 charges, etc.).

9 This program has at least two anticompetitive effects, largely attributable
10 to the fact that this arrangement is expressly an *exclusive* one. First, since
11 BellSouth is given "free" (no cash payment) access to the building conduit and
12 riser, BellSouth is given an inherent cost advantage in obtaining use of these
13 essential bottleneck facilities. Second, since the property manager must agree to
14 promote BellSouth services exclusively in order to be compensated, BellSouth
15 has created an incentive for property managers to refuse to cooperate with ACSI
16 and other CLECs in promoting services to building tenants.

17 The property manager is a critical gatekeeper in obtaining access to
18 business end users, and BellSouth has conspired with them in these instances to
19 prevent ACSI from obtaining unfettered access to building tenants.

20 Interestingly, BellSouth argued strenuously a few years ago that regulators must
21 prevent shared tenant service ("STS") providers from impeding their access to
22 end users in STS-controlled office buildings -- now, BellSouth itself is engaging

1 in the same activity about which it protested so vociferously. The TRA should
2 ensure that such arrangements have not been and are not established in
3 Tennessee.

4 **Q. DO YOU HAVE OTHER EXAMPLES OF ANTICOMPETITIVE**
5 **CONDUCT ON THE PART OF BELL SOUTH?**

6 A. Yes. Based on our experience in other states, BellSouth has been aggressively
7 promoting the use of customer-specific Contract Service Arrangements
8 ("CSAs") where it competes with ACSI for the business of a specific business
9 customer. While there is nothing inherently wrong with CSAs, ACSI does not
10 believe that, given the other competitive advantages of BellSouth in the switched
11 services market, that BellSouth should be permitted to lock in customers to long
12 term contracts at this time. ACSI is principally concerned that BellSouth could
13 engage in pricing below cost. The TRA should implement a "fresh look" policy
14 to ensure that all Tennessee end users receive the benefits of choosing from
15 competitive providers. The TRA should also ensure that termination liability
16 provisions are not applied to the end-user or to the CLEC when a "fresh look"
17 policy is implemented, or when CSAs are resold by CLECs.

18 **Q. DO YOU HAVE MORE EXAMPLES OF BELL SOUTH'S**
19 **ANTICOMPETITIVE ACTIVITY?**

20 A. Yes. For example, in other states, BellSouth has been requiring sales agents to
21 sell BellSouth local services *exclusively*. Indeed, BellSouth's sales agency
22 agreements routinely prevent sales agents from selling CLEC services for a year

1 *after* their BellSouth contract is terminated. Thus, if a sales agent wishes to
2 market ACSI's services, the agent must terminate his or her BellSouth
3 representation and then forego selling ACSI services for at least one year to
4 satisfy the non-compete provisions of BellSouth's exclusive agency agreement.
5 Clearly, this deprives ACSI of access to an important sales channel. BellSouth
6 provided copies of its Authorized Sales Representative Agreements in response
7 to a request made in a Georgia proceeding (Georgia PSC Docket 6863-U), a
8 copy of which is attached to my testimony marked Exhibit D.

9 **Q. ARE THERE ANY MORE EXAMPLES OF ANTICOMPETITIVE**
10 **CONDUCT OR DISCRIMINATORY TREATMENT IN THE END USER**
11 **MARKET?**

12 A. Yes. ACSI's experience in the Chattanooga service territory shows that, despite
13 the 'as is' provision contained in its Resale Agreement with BellSouth, a
14 different and more onerous set of rules applies to ACSI when it attempts to
15 resell BellSouth's services to end users.

16 **Q. PLEASE EXPLAIN.**

17 A. Certain end user customers receiving retail services directly from BellSouth are
18 currently allowed to mix both flat and measured rate services as long as they
19 remain a customer of BellSouth. When ACSI attempts to switch a BellSouth
20 customer receiving a mix of flat and measured service at the same location,
21 BellSouth rejects the change order citing that mixing flat and measured service

1 at the same location is tariff violation.¹⁶ This action is blatantly anti-
2 competitive, discriminatory and a clear violation of the Resale Agreement's 'as
3 is' provision, which is meant to ensure that there is parity of service
4 provisioning between BellSouth and ACSI. In effect, because BellSouth allows
5 its end users to violate its tariffs, ACSI is in the position of policing BellSouth's
6 tariff violations when a customer switches services to ACSI. ACSI is being
7 forced to operate within the confines of BellSouth's tariff, but BellSouth is not.
8 If BellSouth is not complying with its tariff restrictions when servicing its own
9 end users, ACSI should be permitted the same flexibility.

10 The discriminatory treatment of ACSI is exasperated when a simple
11 'switch as is' order is rejected because BellSouth refuses to treat ACSI at parity
12 with its own retail provisioning. In a 'switch as is' order, ACSI merely
13 becomes the retailer of the exact same services that the customer formerly
14 received directly from BellSouth. When a BellSouth customer is receiving a
15 mix of flat and measured service, in order for ACSI to win that customer, it
16 must change his current service to either all flat, or all measured rate. This
17 forces the customer to change the way he does business to come into compliance
18 with the tariff. The customer perceives this as ACSI's procedures, not
19 BellSouth's.

20 **Q. WHAT SHOULD THE TRA DO?**
21

¹⁶. See, Section A2.3.2.A of BellSouth's General Subscriber Services Tariff.

1 A. Order BellSouth to make available for resale its telecommunications services to
2 ACSI without discriminatory conditions and limitations imposed thereon, and
3 subject to the same conditions as BellSouth applies to itself when directly
4 provisioning the same retail services to its end user customers. Specifically, the
5 TRA should require that BellSouth permit ACSI to resell both flat and measured
6 rate service on the same business premises to the same subscribers (end users)
7 on the same terms and conditions as BellSouth provisions said services to its
8 own end users.

9 **Q. IN ADDITION TO THESE EXAMPLES OF ANTICOMPETITIVE**
10 **CONDUCT ENCOUNTERED IN THE END-USER MARKET, HAVE YOU**
11 **HAD SIMILAR PROBLEMS WHEN COMPETING WITH BELL SOUTH**
12 **FOR CARRIER BUSINESS?**

13 A. Yes, particularly with reference to BellSouth's application of nonrecurring
14 reconfiguration charges ("RNRCs") to access channel termination ("ACTL")
15 moves. In fact, in February 1996, ACSI filed a Formal Complaint with the
16 FCC with reference to the grossly excessive RNRCs that BellSouth imposed on
17 IXCs, attempting to make an ACTL move to ACSI.

18 ACTL moves are required whenever an IXC agrees to switch all or part
19 of its direct trunked access transport services on a given route from the
20 BellSouth network to the network services offered by CLECs, such as ACSI.
21 ILECs typically require the payment of RNRCs to accomplish such ACTL
22 moves. Unfortunately, BellSouth's RNRC's are applied inconsistently and have

1 effectively shut ACSI, and all other CAPs, out of the customer facility market in
2 BellSouth territory.

3 In ACSI's experience, BellSouth has applied the RNRCs for ACTL
4 moves in a manner which prevents IXC's from switching to ACSI transport
5 services. As we explained in our Formal Complaint, which is appended hereto
6 as Exhibit E the charges imposed on IXC's are not reasonably related to the
7 direct costs incurred by BellSouth in making the ACTL move. Indeed, they are
8 inconsistent with the tariff rates included in BellSouth's interstate access tariff.
9 Even more troubling, the RNRCs imposed by BellSouth for IXC access network
10 reconfigurations to connect to ACSI services routinely far exceed the
11 reconfiguration charges imposed by BellSouth when an IXC orders
12 reconfigurations from one BellSouth service to another.

13 This circumstance presents prospective customers with three equally
14 unattractive choices: (1) not to reconfigure; (2) to reconfigure with BellSouth so
15 as to avoid or minimize the excessive RNRCs; or (3) to move to ACSI and pay
16 the RNRC costs or force ACSI to absorb such costs. Often, the only way for
17 ACSI to make a reasonable bid for the business of a potential access customer,
18 therefore, is to offer to pay for the significant and unreasonable reconfiguration
19 costs imposed by BellSouth. Unfortunately, this is almost always infeasible. As
20 a result, ACSI's efforts to convince otherwise ready, willing and able access
21 customers to switch from BellSouth transport services have been stymied.

22 **Q. CAN YOU OFFER ANY SPECIFIC EXAMPLES OF WHEN**

1 **BELLSOUTH'S RNRCS HAVE BEEN A PROBLEM?**

2 A. Yes. In one instance, an IXC agreed to move thirteen (13) DS3 circuits from
3 BellSouth to ACSI. ACSI proceeded to prepare for the reconfiguration,
4 including the purchase of OC12 equipment to accommodate the rollover.
5 However, as a result of BellSouth's excessive RNRCS, ACSI lost this five-year
6 contract worth an expected \$500,000 in revenues.

7 **Q. DO YOU HAVE ANY EXAMPLES OF ANTICOMPETITIVE CONDUCT**
8 **ON THE PART OF BELLSOUTH IN TENNESSEE?**

9 A. Yes, I point out a few particular cases from ACSI's Chattanooga service area.
10 On April 3, 1997, ACSI placed a resale order with BellSouth for service to
11 Chattanooga Data Connection ("CDC"), a local Internet service provider. CDC
12 requested a due date of April 17. ACSI received a complete letter of
13 authorization ("LOA") from CDC on April 9 which authorized ACSI to switch
14 service from BellSouth to ACSI. The LOA was immediately faxed to BellSouth
15 so that ACSI could receive a customer service record (CSR) detailing CDC's
16 current service configuration.

17 After a provisioning delay, on April 18, ACSI met with Skip Lomas, the
18 President of CDC, to inform him that the service installation would be delayed.
19 At this time, Mr. Lomas informed ACSI that BellSouth had contacted him on
20 April 9 about remaining with BellSouth. Mr. Lomas stated that Woody Ayres,
21 a BellSouth ISP sales person, offered him a "special deal" in exchange for a
22 two year exclusive contract with BellSouth. ACSI is concerned that BellSouth

1 sales representatives are somehow finding out about CLEC orders before the
2 customer is even cutover to ACSI.

3 **Q. DO YOU HAVE ANY OTHER EXAMPLES?**

4 A. Yes. On numerous occasions BellSouth continues to bill an ACSI customer
5 after that customer switches service from BellSouth to ACSI. This is very
6 confusing and annoying to the customer. This "double billing" was cited in the
7 Ameritech Michigan order as a reason for Ameritech's denial.

8 **Q. WHY IS THAT A PROBLEM FOR ACSI?**

9 A. Because the customer perceives the billing problem as something that arose only
10 after he switched service to ACSI. Thus, there is a perception by the customer
11 that the billing problem was caused by ACSI not being able to coordinate
12 service properly with BellSouth.

13 **Q. DO YOU HAVE ANY EXAMPLES WHERE THIS HAS HAPPENED IN**
14 **TENNESSEE?**

15 A. Yes. There are several recent situations where BellSouth continued to bill
16 customers after those customers had switched to ACSI. Chattanooga Shooting
17 Supplies ("CSS") is a good example. CSS switched all of its local lines to ACSI
18 local service from BellSouth in October 1997, but continued to receive current
19 bills from BellSouth on one line after ACSI commenced servicing the CSS
20 account. Initially, CSS contacted BellSouth customer services to correct the
21 problem. BellSouth customer services informed CSS that it must deal directly
22 with ACSI because ACSI was its local service provider. CSS then asked ACSI

1 to correct the billing problem.

2 **Q. WHAT ACTIONS DID ACSI TAKE?**

3 A. In January 1998, ACSI called and was informed by BellSouth's Small Business
4 Billing Department that only the owner of CSS had authority to switch service
5 on the subject line. The letter of authorization ("LOA") sent to BellSouth to
6 switch all lines to ACSI was executed by CSS's controller. BellSouth had
7 previously switched service on all lines in the CSS account except for the one at
8 issue on the authority of the LOA signed by CSS's controller. BellSouth
9 arbitrarily refused to switch this one line based on the LOA.

10 **Q. WHY DID BELL SOUTH REFER CSS TO ACSI WHEN IT CONTACTED**
11 **BELL SOUTH DIRECTLY?**

12 A. Apparently different departments within BellSouth had different records as to
13 the status of the CSS account. Clearly, someone in Billing was still generating a
14 BellSouth bill for the customer. Yet BellSouth's billing department in Nashville
15 had records indicating that if calls were received on the CSS account, the caller
16 should be transferred to BellSouth's Reseller Division. Apparently, that is why
17 CSS was referred to ACSI when it attempted to correct the billing problem
18 directly with BellSouth. Customers rightfully cannot understand why BellSouth
19 claims they are no longer a BellSouth customer, yet they continue to receive a
20 BellSouth bill.

21 **Q. WHAT IS THE STATUS OF THIS ACCOUNT TODAY?**

22 A. On March 18, BellSouth still maintained that one line of CSS is BellSouth's,

1 despite CSS's desire to have all lines provisioned by ACSI. BellSouth refuses to
2 move the single line to ACSI. CSS has paid ACSI on the ACSI billing
3 statement for this account since originally being billed by ACSI. BellSouth has
4 informed CSS that it is in arrears on this account. This highlights a rebated
5 problem. BellSouth's CSRs do not contain all the lines for a given customer,
6 causing repeated confusion for ACSI customers.

7 **Q. ARE THERE ANY EXAMPLES OF BELL SOUTH'S REFUSAL TO**
8 **TIMELY IMPLEMENT ACSI'S RESALE ORDERS IN TENNESSEE?**

9 A. Yes. A good example is the account of Provident Life & Accident Insurance
10 Company ("Provident"), where ACSI simply ordered three 1FB's from
11 BellSouth for resale. However, it took BellSouth over three months to get the
12 lines installed and properly working!

13 **Q. PLEASE ELABORATE.**

14 A. Provident ordered three 1FB's from ACSI in September 1997. On September 2,
15 ACSI requested the CSR of Provident from BellSouth. The BellSouth Local
16 Carrier Service Center in Birmingham claimed that it did not know who
17 Provident was or where it was located when ACSI placed its order. This seems
18 unlikely because of the dollar volume of local service BellSouth provides to
19 Provident on a monthly basis, and the fact that Provident has been in its
20 extremely prominent current location for many years. After repeatedly
21 requesting the CSR over a period of six weeks, ACSI finally received from
22 BellSouth what was apparently a complete CSR on October 10. BellSouth

1 required ACSI to give BellSouth individual phone numbers from a club bill
2 account number in order to obtain the CSR. ACSI then ordered three 1FB's
3 from BellSouth. ACSI received a firm order commitment date of November 26
4 from BellSouth.

5 At the time of installation, BellSouth did not inform ACSI that the lines
6 were installed, what the phone numbers were, nor where the lines were
7 physically terminated. This is not unusual. Provident has thousands of phone
8 jacks so not knowing the physical location of the jack makes using the line
9 impossible. After ACSI repeatedly requested the numbers and locations of the
10 lines, on December 5, BellSouth revealed the new phone numbers to ACSI, and
11 eventually, after much coordinated effort on the part of ACSI, revealed the
12 location of the phone jacks.

13 When Provident attempted to use the new numbers, it discovered that
14 two of the three lines installed were incorrectly provisioned as loop starts, as
15 opposed to ground start. ACSI had correctly ordered the lines as ground start.
16 Additionally, one line had no dial tone when Provident attempted to use the line.
17 When ACSI contacted BellSouth to have this problem fixed, BellSouth
18 responded that it needed to locate the ACSI lines because BellSouth did not
19 know where the lines were terminated. This type of confusion owing entirely to
20 BellSouth's lack of consistent process and procedures happens day in and day
21 out. These are just a few examples among many.

22 **Q. WHAT IS THE RELATIONSHIP BETWEEN THE PROBLEMS ACSI**

1 **HAS EXPERIENCED AND BELL SOUTH'S DESIRE TO REENTER THE**
2 **MARKET FOR INTERLATA SERVICES?**

3 A. BellSouth's interest in obtaining permission to reenter the interLATA services
4 market constitutes the principal incentive BellSouth has to interconnect with
5 local competitors and to correct anticompetitive abuses. ACSI's experience in
6 other states has shown that even before BellSouth has obtained its interLATA
7 approvals, it has been unable to resist engaging in a variety of activities
8 designed to protect its current dominance in the marketplace. Once BellSouth
9 has passed through the turnstile and has been authorized to reenter the market
10 for interLATA services, it will be nearly impossible to retract this authority.
11 Thus, it is absolutely imperative to ensure that BellSouth has fully complied
12 with all of the requirements of Section 271 of the Act, and that BellSouth is not
13 hindering the development of a competitive local market, before the TRA
14 supports BellSouth's FCC application for in-region interLATA service.

15 **Q. WHICH OF THE 14 POINTS HAS BELL SOUTH NOT MET?**

16 A. The provision of cost-based rates (point 1), unbundled loops (points 2 and 4),
17 OSS (point 7), number portability (point 11), reciprocal compensation (point
18 13), and resale (point 14) are six points preventing BellSouth from meeting the
19 fourteen-point competitive checklist of Section 271 of the Act. Regardless of
20 the terms of BellSouth's Statement of Generally Available Terms and Conditions
21 ("SGAT"), ACSI's experience in Tennessee and its complaints filed with the
22 Georgia Commission and the FCC demonstrate that BellSouth has not met these

1 items. BellSouth should be denied reentry into the in-region interLATA market
2 on this basis alone. Furthermore, BellSouth's attempts through various other
3 practices to insulate its markets from competition and monopoly market share
4 demonstrate that it is not in the public interest for BellSouth to be allowed to
5 reenter the interLATA market until it has implemented actual and effective
6 competition in its local markets.

7 **Q. SHOULD THE TRA APPROVE BELLSOUTH'S SGAT?**

8 A. No. The SGAT does not include permanent cost-based rates and should not be
9 approved on that basis alone. This would be inconsistent with the approach of
10 the Georgia Commission. If the Commission believes that approval will
11 promote local competition, the SGAT should only be permitted to go into effect
12 with the explicit caveat that it does not meet at list 6 of the points on the 14-
13 point checklist. This approach was taken by the Illinois Public Service
14 Commission and is a fallback alternative, if the TRA believes there is a need to
15 make the SGAT effective.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes

Exhibit A	Recent winback notices from BellSouth
Exhibit B	ALTS' supplement to the LCUG proposal
Exhibit C	BellSouth's Letter Agreement for Property Management Services
Exhibit D	BellSouth's Authorized Sales Representative Agreements
Exhibit E	Georgia Complaint
Exhibit F	FCC Complaint on Failure to Provision Unbundled Loops
Exhibit G	FCC Complaint on Discriminatory Application of Non-Recurring Charges



BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202-3170

December 8, 1997
(404)296-5540

NOTICE TO:

**A C S I
BILLING SRVC
10420 LITTLE
PATUXENT PKWY 310
COLUMBIA MD 21044**

Dear Customer:

We have received a request to transfer local service for account number 404-296-5540 from your account to another service provider. While this service will be transferred as of December 4, 1997, we are providing this notification as a courtesy to you.



BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202-3170

December 8, 1997
(770)412-9080

NOTICE TO:

**A C S I
BILLING SERVICES
10420 LITTLE
PATUXENT PKWY
COLUMBIA MD 21044**

We have received notification that the telephone account 770-412-9080 for ROSEWOOD STYLING S was transferred to you in error. Consequently, effective on December 4, 1997, the account for this customer has been reestablished with the previous service provider.



BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202-3170

December 8, 1997
(404)584-0842

NOTICE TO:

**A C S I
BILLING SERVICE
10420 LITTLE
PATUXENT PKWY #310
COLUMBIA MD 21044**

Dear Customer:

We have received a request to transfer local service for account number 404-584-0842 from your account to another service provider. While this service will be transferred as of December 4, 1997, we are providing this notification as a courtesy to you.



BellSouth Telecommunications

P. O. Box 100170

Columbia, SC 29202-3170

December 7, 1997

(904)388-7536

NOTICE TO:

A C S I

ATTN PAUL KINGMAN

10420 LITTLE

PATUXENT PKWY #310

COLUMBIA MD 21044

Dear Customer:

We have received a request to transfer local service for account number 904-388-7536 from your account to another service provider. While this service will be transferred as of December 2, 1997, we are providing this notification as a courtesy to you.



BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202-3170

November 27, 1997
(504)925-2801

NOTICE TO:

**A C S I
ATTN PAUL KINGMAN
10420 LITTLE
PATUXENT PKWY #310
COLUMBIA MD 21044**

*✓ club for removal
give to OZ for
disco*

Dear Customer:

We have received a request to transfer local service for account number 504-925-2801 from your account to another service provider. While this service will be transferred as of November 24, 1997, we are providing this notification as a courtesy to you.



BellSouth Telecommunications
P. O. Box 100170
Columbia, SC 29202-3170

November 22, 1997
(904)725-4889

NOTICE TO:

**ACSI
BILLING SERVICES
10420 LITTLE
PATUXENT PKWY #310
COLUMBIA MD 21044**

Dear Customer:

We have received a request to transfer local service for account number 904-725-4889 from your account to another service provider. While this service will be transferred as of November 21, 1997, we are providing this notification as a courtesy to you.

*✓ to see if disco'd and if
off of Club*

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES (ALTS)

December 9, 1997

Version 1.0

Prepared for:

Richard J. Metzger
Association for Local Telecommunications Services, Inc.
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Introduction

On August 8, 1996, the Federal Communications Commission released its First Report and Order in CC Docket No. 96-98 establishing regulations to implement the requirements of the Telecommunications Act of 1996. On February 12, 1997, the Local Competition Users Group (LCUG) issued their "Foundation for Local Competition: Operations Support Systems Requirements for Network Platform and Total Services Resale".¹ This latter document began to structure the basic tenets for Service Parity, Performance Measurement, Electronic Interfaces, Systems Integrity Notification of Change, and Standards Adherence.

On July 30, 1997, the Association for Local Telecommunications Services (ALTS) submitted reply comments to the Federal Communications Commission (FCC), supporting the work of the LCUG group and requesting expedited rulemaking on the "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996".²

Through subsequent sub-committee work, LCUG has developed a "comprehensive list of potential measurements" to address ILEC (Incumbent Local Exchange Carrier) OSS (Operation Support System) performance in the areas of pre-ordering, ordering and provisioning, maintenance and repair, network performance, unbundled elements, operator services and directory assistance, system performance, service center availability, and billing. SQMs (Service Quality Measurements) goals have been established to provide "a nondiscrimination standard in the absence of directly comparative (actual) ILEC results" which the ILECs have been reluctant or unwilling to share.

ALTS fully supports the work done by the LCUG, but also recognizes that its CLEC membership may have somewhat differing needs. Therefore, ALTS has been working with a sub-committee of LCUG, as well as representatives from its own membership to form WIPS (Workgroup on ILEC Performance Standards). The WIPS charter is to ensure that critical measurement needs are available for its membership in either the LCUG document, or the complementary ALTS document contained herein. It is not the intent of the WIPS to design an entirely new document, but rather to accept and support the concepts and measurements described in the LCUG SQM document, supplemented by those measurement categories that are of special interest to ALTS' Membership. Indeed, sections of the following document are taken directly from the latest LCUG SQM Version 6.1, dated September 26, 1997, to reinforce WIPS' desire to build a common performance measurement foundation, rather than create a new one.

¹ See LCUG SQM document version 6.1 dated September 26, 1997

² See Petition for Expedited Rulemaking (including Appendices A & B) by LCI International Telecom Corp. and Competitive Telecommunications Association (CompTel) dated May 30, 1997.

Introduction

A basic requirement for the ALTS Service Quality Measurements (SQM) document is to adhere as much as possible to the format of LCUG Version 6.1. Therefore, as the ALTS addendum items are discussed, portions of the LCUG are described as directly applicable. At the same time, it is clear to the ALTS membership that some issues, such as Network Performance, Emergency Services, and Collocation Provisioning need to be further defined and developed for measurement purposes. Overall, the ALTS document accomplishes the following:

- Recognizes, accepts and supports the basic measurement foundation established in the LCUG Version 6.1
- Modifies those LCUG sections, such as Order Provisioning, to include proposed ALTS measurements. For example, in the case of Order Provisioning, ALTS adds measures, within the LCUG framework, to consider Customer Desired Due Dates Met, and Interim Number Portability Coordinated Orders.
- Describes addendum items that complement LCUG direction, yet offer a new dimension to more clearly satisfy ALTS membership requirements.

The LCUG Version 6.1 "Measurement Plans" description and "Business Rules" described in the LCUG document Introduction will apply to the ALTS SQM document, as well. These include comments and definitions related to the following:

- Test for Parity
 - Benchmarking Study Requirements
 - Reporting Expectations and Report Format
 - Delivery of Reports and Data
 - Geographic Reporting
 - Verification and Auditing
 - Adaptation

Executive Overview

This Executive Overview section:

Acts as an addendum to the LCUG Executive Overview
Provides a summary of the detailed requirements
Enables a quick overview and understanding of the proposed ALTS measurements
Summarizes the Business Implications associated with each measurement
Accommodates a target audience who has a need to know about the measurements, but not the specific details

Executive Overview:	Page 5
Network Performance	Page 6
Emergency Services	Page 7
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Executive Overview

Network Performance (NP)

Function:	
Network Interconnection Performance	
Business Implications:	
<ul style="list-style-type: none">• The perceived quality of CLEC retail services, particularly when either ILEC services are resold or UNEs are employed, will be heavily influenced by the underlying quality of the ILEC performance• Interconnection with the ILEC network, whether for facilities or equipment, needs to be provided at a level of quality that is equal to that which the ILEC provides itself, a subsidiary, an affiliate, or any other party	
Measurements:	Results Detail:
<ul style="list-style-type: none">• Percent Trunk Blockage	<ul style="list-style-type: none">• By end office to access tandem trunk group• By final trunk group

Executive Overview

Emergency Services (ES)

Function:	
Timeliness of Updating the Database	
Business Implications:	
<ul style="list-style-type: none"> ILECs historically “own” and control the 911 databases, which CLECs provide input to for their customers Timely update of the 911/E911 database for customer location, telephone numbers, and selective router can indeed become a “life and death” situation as customers attempt to reach emergency help dialing 911/E911 CLECs can not offer Local Exchange Service without 911/E911 capability 	
Measurements:	Results Detail:
<ul style="list-style-type: none"> Mean Database Update Interval Percent Updates Completed within 24 Hours 	<ul style="list-style-type: none"> By order update to include customer location and number By order update to include selective router for proper dispatch center

Function:	
<ul style="list-style-type: none"> Accuracy of Database 	
Business Implications:	
<ul style="list-style-type: none"> Accurate update of the 911/E911 database for customer location, telephone numbers, and selective router can indeed become a “life and death” situation as customers attempt to reach emergency help dialing 911/E911 	
Measurements:	Results Detail:
<ul style="list-style-type: none"> Percent Database Accuracy 	<ul style="list-style-type: none"> By order update for Customer location, telephone number By selective router

Function:	
<ul style="list-style-type: none"> Provisioning of 911/E911 Trunks 	
Business Implications:	
<ul style="list-style-type: none"> Customer service reaching 911/E911 is of critical importance CLEC Customers need to be able to access the ILEC 911/E911 office on the first try due to the nature of their emergency situations CLECs cannot offer Local Exchange Service without 911/E911 capability 	
Measurements:	Results Detail:

<ul style="list-style-type: none"> • Mean interval to provision 911 trunks • Percent trunks completed within 15 days • Percent Trunk blockage 	<ul style="list-style-type: none"> • By trunks added • Trunks measured every half-hour for peg count, overflow and usage. • Reported on a Busy Hour basis.
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Executive Overview

Emergency Services (ES)

Function:	
System availability to the MSAG (Master Street Access Guide)	
Business Implications:	
<ul style="list-style-type: none"> • The 911/E911 capability works properly when, after having dialed "911", a customer calling into the Dispatch Center, can accurately have their telephone number associated with the correct street address, and thus receive dispatched help quickly • CLECs need the addresses contained in the MSAG under the jurisdiction of the ILEC, to be able to associate the correct address with each telephone number • Fast response time in obtaining MSAG information is important in order that the appropriate 911/E911 databases can be updated promptly and accurately 	
Measurements:	Results Detail:
<ul style="list-style-type: none"> • Percent MSAG system availability 	<ul style="list-style-type: none"> • By MSAG interface

Executive Overview

Collocation Provisioning (CP)

Function:	
<ul style="list-style-type: none">Physical and Virtual Collocation commitments Met	
Business Implications:	
<ul style="list-style-type: none">Due to the natural evolution of local telephone services over the years, ILECs own, rent, or lease buildings in most cities and towns. Many of these buildings house ILEC Central Office switches and equipment, giving them an advantage in the immediate marketplace. These same buildings often have extra space, due to technology compressing the size of equipment over time.In order to be able to compete and to install necessary equipment to do so, CLECs need access to space available in ILEC buildings and Remote locationsILECs need to respond in a timely fashion to CLEC requestsTo serve its own customers in a timely fashion, CLECs need to be able to count on ILECs meeting commitments for Physical and Virtual Collocation	
Measurements:	Results Detail:
<ul style="list-style-type: none">Mean response to request intervalPercent responses received within 5 business daysPercent of Physical Commitments MetPercent of Virtual Commitments Met	<ul style="list-style-type: none">By requestBy Central Office

Formula Quick Reference

	Measurement Description by	Measurement Formula:
	•Network Performance	
NP-2	Percent Trunk Blockage	Percent Trunk Blockage = [(Busy Hour Overflow Count) / (Busy Hour Peg Count) During Report Period] x 100
	Emergency Services	
ES-1	Mean Database Update Interval	Mean Database Update Interval = \sum[(Completion Date&Time)-(Update Submission Date&Time)]/(Count of Updates Completed in Reporting Period)
ES-2	Percent Updates Completed within 24 Hours	Percent Updates Completed within 24 Hours = [(Count of Updates Completed within 24 Hours)/(Count of Updates Completed in Reporting Period)] x 100
ES-3	Percent Database Accuracy	Percent Database Accuracy = [(Count of Updates Completed w/o error) / (Count of Updates Completed)] x 100

ES-4	Mean Interval to Provision 911/E911 trunks	Mean Interval to Provision 911/E911 Trunks = $\frac{\sum[(\text{Completion Date and Time}) - (\text{Trunk Order Submission Date and Time})]}{(\text{Number of 911/E911 Trunks Completed in Reporting Period})}$
ES-5	Percent trunks completed within 15 days	Percent Trunks Completed within 15 Days = $\frac{[(\text{Count of Trunks completed within 15 Days}) / (\text{Count of Trunks Completed in Reporting Period})] \times 100}{1}$
ES-6	Percent Trunk Blockage	Percent Trunk Blockage = $\frac{[(\text{Busy Hour Overflow Count}) / (\text{Busy Hour Peg Count}) \text{ during Report Period}] \times 100}{1}$
ES-7	Percent MSAG System Availability	Percent MSAG System Availability = $\frac{[(\text{Hours MSAG is Available to CLECs During Reporting Period}) / (\text{Number of Hours MSAG was Scheduled to be Available During Reporting Period})] \times 100}{1}$

Formula Quick Reference

	Collocation Provisioning	
CP-1	Mean Response to Request Interval	Mean Response to Request Interval = $\sum[(\text{Request Response Date\&Time}) - (\text{Request Submission Date\&Time})]/(\text{Count of Requests Submitted in Reporting Period})$
CP-2	Percent Responses Received within 5 Business Days	Percent Responses Received within 5 Business Days = $[(\text{Count of Responses received within 5 Business Days})/(\text{Count of Requests Submitted in Reporting Period})] \times 100$
CP-3	Percent Physical Commitments Met	Percent Physical Commitments Met = $[(\text{Count of Physical Commitments Met})/(\text{Count of Physical Commitments in Reporting Period})] \times 100$
CP-4	Percent Virtual Commitments Met	Percent Virtual Commitments Met = $[(\text{Count of Virtual Commitments Met})/(\text{Count of Virtual Commitments in Reporting Period})] \times 100$

Measurement Detail

The Measurement Detail section:

Acts as an addendum to the LCUG Measurement Detail

Provides explicit detail information for each measurement

Provides business reasons for the measurement, required data elements, analogs to the existing ILEC business function and comparative results suggestions

Is targeted at those individuals who need to know and understand the detail categories and measurement methodologies

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Measurement Detail

Ordering and Provisioning (OP)

Function:	Order Completion Intervals
Business Implications:	<p>In order to be successful in the marketplace, CLECs must be capable of delivering service in time frames equal to or better than what the ILEC delivers for comparable service configurations. Likewise, when the CLEC commits to a due date for service delivery, the customer plans for service availability have been established and the customer will be dissatisfied if the requested service or feature is not delivered when promised. The "average completion interval" measure monitors the time required by the ILEC to deliver integrated and operable service components requested by the CLEC, regardless of whether service resale or unbundled network elements are employed. When the service delivery interval of the ILEC is measured for comparable services, then conclusions can be drawn regarding whether or not CLECs have a reasonable opportunity to compete for customers. The "orders completed on time" measure monitors the reliability of ILEC commitments with respect to committed due dates to assure that CLECs can reliably quote expected due dates to their retail customer. In addition, when monitored over time, the "average completion interval" and "percent completed on time" may prove useful in detecting developing capacity issues. <i>The "Percent Customer Desired Due Date Met" measures the ILEC performance against what the CLEC customer requested versus the ILEC commitment made based on the ILECs own internal requirements which do not necessarily consider customer needs. The "Average Completion for INP Coordinated Orders" that involve Interim Number Portability (INP), and the "Percent of INP Coordinated Orders with Disconnection, Loop Provisioning, and NP done within 5 minutes of Each Other" monitor the quality of work done by the ILEC when physical connections and software updates must be completed at the same time to prevent customer outage and poor service. CLEC ability to receive quality Number Portability work is critical to their ability to compete in the marketplace.</i></p>

**Measurement
Methodology:**

Average Completion Interval = $\Sigma [(\text{Completion Date \& Time}) - (\text{Order Submission Date \& Time})] / (\text{Count of Orders Completed in Reporting Period})$

Percent Orders Completed on Time = $[(\text{Count of Orders Completed within ILEC Committed Due Date}) / (\text{Count of Orders Completed in Reporting Period})] \times 100$

Percent Customer Desired Due Date Met = $[(\text{Count of Orders that met the Customer Desired Due Date}) / (\text{Count of Orders Completed in Reporting Period})] \times 100$

Average Completion for INP Coordinated Orders = $\Sigma [(\text{Completion Date and Time}) - (\text{Order Submission Date \& Time})] / (\text{Count of Orders Completed in Reporting Period})$

Percent of INP Coordinated Orders with Disconnection, Loop Provisioning, and NP done within 5 minutes of Each Other = $[(\text{Count of INP Coordinated Orders with Disconnection, Loop Provisioning, and NP done within 5 minutes of each other}) / (\text{Count of INP Coordinated Orders with Disconnection, Loop Provisioning, and NP completed in Reporting Period})] \times 100$

**Measurement
Methodology:**

For CLEC Results: The actual completion interval is determined for each order processed during the reporting period. The completion interval is the elapsed time from the ILEC receipt of a syntactically correct order from the CLEC to the ILEC's return of a valid completion notification to the CLEC. Elapsed time for each order is accumulated for each reporting dimension (see below). The accumulated time for each reporting dimension is then divided by the associated total number of orders completed within the reporting period.

The percentage of orders completed on time is determined by first counting, for each specified reporting dimension, both the total numbers of orders completed within the reporting interval and the number of orders completed by the committed due date (as specified on the initial FOC returned to the CLEC). For each reporting dimension, the resulting count of orders completed no later than the committed due date is divided by the total number of order completed with the resulting fraction expressed as a percentage.

For ILEC Results: The ILEC computation is identical to that for the CLEC with the clarifications noted below.

Other Clarifications and Qualification:

- The elapsed time for an ILEC order is measured from the point in time when the ILEC customer service agent enters the order into the ILEC order processing system until the date and time reported by the ILEC installation personnel log actual completion of all work necessary to permit service initiation, whether or not the ILEC initiates customer billing at that point in time.
- Results for the CLECs are captured and reported at the order level (e.g., unique PON).
- The Completion Date is the date upon which the ILEC issues the Order Completion Notice to the CLEC.
- If the CLEC initiates a supplement to the originally submitted order and the supplement reflects changes in customer requirements (rather than responding to ILEC initiated changes), then the order submission date and time will be the date and time of the ILEC receipt of a syntactically correct order supplement.
- No other supplemental order activities will result in an update to the order submission date and time used for the purposes of computing the order completion interval.
- See "Order Status" metric sheet for discussion of ILEC analogs receipt of a syntactically correct *order* and return of a valid completion notice.
- Elapsed time is measured in hours and hundredths of hours rounded to the nearest tenth of an hour.
- Because this should be a highly automated process, the accumulation of elapsed time continues through off-schedule, weekends and holidays.

Reporting Dimensions:		Excluded Situations:	
<ul style="list-style-type: none"> •Service - Standard Service Groupings (See Appendix A) •Activity - Standard Order Activities (See Appendix A) Geographic Scope 		<ul style="list-style-type: none"> •Canceled orders •Initial Order when supplemented by CLEC <ul style="list-style-type: none"> •ILEC Orders associated with internal or administrative use of local services 	
Data Retained Relating To CLEC Experience:		Data Retained Relating To ILEC Performance:	
<ul style="list-style-type: none"> •Report Month •CLEC Order Number •Order Submission Date •Order Submission Time •Order Completion Date •Order Completion Time •Service Type •Activity Type •Geographic Scope 		<ul style="list-style-type: none"> •Report Month •Average Order Completion Interval <ul style="list-style-type: none"> •Standard Error for the Order Completion Interval •Service Type •Activity Type •Geographic Scope 	
Performance Standard in Absence of ILEC Results:		<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • Unless otherwise noted, the order completion interval for installations that do not require a premise visit and do not require anything beyond software updates is 1 business day. • Unless otherwise noted, the order completion intervals for installations that involve a premise visit or physical work is three business days. • Installation Interval Exceptions: <ul style="list-style-type: none"> • <u>The installation interval for INP Coordinated Orders with Disconnection, Loop Provisioning, and NP requires that all of these activities be completed within 5 minutes of each other.</u> • UNE Platform (at least DS0 loop + local switching + common transport elements) installation interval is 1 business day whether or not premise work is required. • The installation interval for unbundled loops is always 1 business day. • UNE Channelized DS1 (DS1 unbundled loop + multiplexing) installation interval is within 2 business days. • Unbundled Switching Element installation interval is within 2 business days • DS0/DS1 Dedicated Transport installation interval is within 3 business days • All other Dedicated Transport installation interval is within 5 business days. • The installation interval for all orders involving only feature modification is 5 hours, <u>unless otherwise noted.</u> • <u>Unless otherwise noted,</u> Order completion interval for all disconnection orders is 1 business day. 	

•Note: Pages 13-15 have been directly modified from the LCUG document Version 6.1. Changes are noted in Underlined Italics.

Measurement Detail

Network Performance (NP)

Function:	Network Interconnection Performance
Business Implications:	<p>The perceived quality of CLEC retail services, particularly when either ILEC services are resold or UNEs are employed, will be heavily influenced by the underlying quality of the ILEC performance. Interconnection with the ILEC network, whether for facilities or equipment, needs to be provided at a level of quality that is equal to that which the ILEC provides itself, a subsidiary, an affiliate, or any other party. The quality of CLEC service to customers is directly dependent on adequacy of trunking capacity within the ILEC network, and between the ILEC network and the CLEC network.</p>
Measurement Methodology:	<p>Percent Trunk Blockage = [(Busy Hour Overflow Count)/(Busy Hour Peg Count) during the Reporting Period] x 100</p> <p>For CLEC Results: This metric is computed at the end of the reporting period. It looks at the busiest hour during the reporting period as defined by the highest peg count (call attempts on the trunk group). It then determines for that hour the count of overflow (those call attempts that were blocked due to inadequate trunking, trunks turned down due to maintenance, or other Network failures). It then computes the percentage of blocking for that busy hour. Percentage of blocking for trunk groups is monitored from the CLEC to the ILEC end office, CLEC to ILEC local tandem, and CLEC to ILEC Access tandem.</p> <p>For ILEC Results: This metric is computed at the end of the reporting period. It looks at the busiest hour during the reporting period as defined by the highest peg count (call attempts on the trunk group). It then determines for that hour the count of overflow (those call attempts that were blocked due to inadequate trunking, trunks turned down due to maintenance, or other Network failures). It then computes the percentage of blocking for that busy hour. Percentage of blocking for trunk groups is monitored from ILEC end office to ILEC end office, ILEC end office to local tandem, and ILEC end office to access tandem.</p> <p>Other Clarifications and Qualifications: Trunk Group sizing is based on the Engineering criteria of "Grade of Service" and often refers to the "Poisson Tables" to quantify levels of service (such as, P.01 GOS which translates into 1 in 100 blocked calls, or 1% blockage).</p>

Reporting Dimensions:		Excluded Situations:	
<ul style="list-style-type: none"> • Grade of Service (See Appendix A) • Geographic Scope 		<ul style="list-style-type: none"> • None 	
Data Retained Relating to CLEC Experience:		Data Retained Relating to ILEC Performance:	
<ul style="list-style-type: none"> • Report Month • Reporting Dimension • Trunk Group Type • Trunk Group Designation Identifying "from and to" Points • Geographic Scope 		<ul style="list-style-type: none"> • Report Month • Reporting Dimension • Trunk Group Type • Trunk group Designation Identifying "from and to" Points • Geographic Scope 	
Performance Standard in Absence of ILEC Results:		<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then results related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • End office to End office .5% blockage • End office to Local tandem .5% blockage • End office to Access Tandem .5% blockage • Final trunk groups 1% blockage 	

Measurement Detail

Emergency Services (ES)

Function:	Timeliness of Updating the Database
Business Implications:	<p>CLECs are committed to providing emergency services to their customers. ILECs historically “own” and control the 911 databases, which CLECs provide input to for their customers. Timely update of the 911/E911 database for customer location and telephone numbers included in the Automatic Location Identifier (ALI), is necessary in order that emergency services can be promptly dispatched to the proper location should an emergency occur. In addition, the selective router that determines which dispatch center is associated with each customer, must also be updated by the ILEC. Timeliness of these updates can indeed become a “life and death” situation as customers attempt to reach emergency help dialing 911/E911. For the aforementioned reasons, as well as the fact that States require CLECs to offer 911/E911 capability, it is important that ILEC Emergency Services databases be promptly updated to reflect CLEC customer information.</p>

**Measurement
Methodology:**

Mean Database Update Interval = $\sum[(\text{Completion Date\&Time}) - (\text{Update Submission Date\&Time})]/(\text{Count of Updates Completed in Reporting Period})$

Percent Updates Completed within 24 Hours = $[(\text{Count of Updates Completed within 24 Hours})/(\text{Count of Updates Completed in Reporting Period})] \times 100$

For CLEC Results: The actual completion interval is determined for each update processed during the reporting period. The completion interval is the elapsed time from the ILEC receipt of a syntactically correct update from the CLEC to the ILEC's return of a valid completion notification to the CLEC. Elapsed time for each update is accumulated for each reporting dimension (see below). The accumulated time for each reporting dimension is then divided by the associated total number of updates completed within the reporting period.

The percentage of updates completed on time is determined by first counting, for each specified reporting dimension, both the total numbers of updates completed within the reporting interval and the number of updates completed by the committed due date (as specified on the initial FOC returned to the CLEC). For each reporting dimension, the resulting count of updates completed no later than the committed due date is divided by the total number of updates completed with the resulting fraction expressed as a percentage.

For ILEC Results: The ILEC computation is identical to that for the CLEC with the clarifications noted below.

Other Clarifications and Qualification:

**Measurement
Methodology:**

- The elapsed time for an ILEC update is measured from the point in time when the ILEC customer service agent enters the order into the ILEC order processing system until the date and time reported by the ILEC that 911/E911 updates are completed.
- Results for the CLECs are captured and reported at the update level by Reporting Dimension (see below).
- The Completion Date is the date upon which the ILEC issues the Update Completion Notice to the CLEC.
- If the CLEC initiates a supplement to the originally submitted update and the supplement reflects changes in customer requirements (rather than responding to ILEC initiated changes), then the update submission date and time will be the date and time of the ILEC receipt of a syntactically correct update supplement.
- No other supplemental update activities will result in a change to the update submission date and time used for the purposes of computing the update completion interval.
- Elapsed time is measured in hours and hundredths of hours rounded to the nearest tenth of an hour.
- Because this should be a highly automated process, the accumulation of elapsed time continues through off-schedule, weekends and holidays.

Reporting Dimensions:		Excluded Situations:	
• Customer address		• Updates Canceled by the CLEC	
Data Retained Relating to CLEC		Data Retained Relating to ILEC	
•Report Month		•Report Month	
Performance Standard in Absence of ILEC Results:		<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • The update interval is always within 24 hours. 	

Measurement Detail

Function:	Accuracy of Database
Business Implications:	<p>Due to the emergency nature of dealing with 911/E911 databases, the business implications of ensuring that databases be both updated promptly and updated accurately, are similar. CLECs are committed to providing emergency services to their customers. ILECs historically "own" and control the 911 databases, which CLECs provide input to for their customers. Timely and accurate update of the 911/E911 database for customer location and telephone numbers included in the Automatic Location Identifier (ALI), is necessary in order that emergency services can be promptly dispatched to the proper location should an emergency occur. In addition, the selective router that determines which dispatch center is associated with each customer, must also be updated by the ILEC. Timeliness and accuracy of these updates can indeed become a "life and death" situation as customers attempt to reach emergency help dialing 911/E911. For the aforementioned reasons, as well as the fact that States require CLECs to offer 911/E911 capability, it is important that ILEC Emergency Services databases be accurately updated to reflect CLEC customer information.</p>

**Performance
Standard in
Absence of ILEC
Results:**

If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:

Completed CLEC updates, by reporting dimension, are accurate no less than 99.9% of the time.

Measurement Detail

Function:	Provisioning of 911/E911 Trunks
Business Implications:	CLECs cannot offer Local Exchange Service without a 911/E911 capability. In order for CLEC customers to be able to access the ILEC 911/E911, ILEC office trunk facilities need to be installed in a timely fashion. They also need to be provided in a quantity to minimize the risk of trunk blockage, which could prevent critical emergency call attempts from reaching 911. CLEC Customers need to be able to access the ILEC 911/E911 office on the first try due to the nature of their emergency situations

**Measurement
Methodology:**

Mean Interval to Provision 911/E911 Trunks = $\sum[(\text{Completion Date and Time}) - (\text{Trunk Order Submission Date and Time})]/(\text{Number of 911/E911 Trunks Completed in Reporting Period})$

Percent Trunks Completed within 15 Days = $[(\text{Count of Trunks completed within 15 Days})/(\text{Count of Trunks Completed in Reporting Period})] \times 100$

Percent Trunk Blockage = $[(\text{Busy Hour Overflow Count})/(\text{Busy Hour Peg Count}) \text{ during Report Period}] \times 100$

For CLEC Results: The "Mean Interval to Provision 911/E911 Trunks" monitors how long it takes the ILEC to add trunks, utilized by CLEC customers, to improve capacity incoming to the ILEC 911/E911 office. The actual completion interval is determined for each trunk added during the report period. The completion interval is the elapsed time from receipt of a request from the CLEC (or from creation of the trunk order by the ILEC, if self-initiated), until return of a valid completion notification to the CLEC. The accumulated time is then divided by the associated total number of 911/E911 incoming trunks added within the report period.

The "Percent Trunks Completed within 15 days" monitors the ILEC ability to respond within 15 days to add trunks, utilized by CLEC customers to access the ILEC 911/E911 office. The percentage of trunks added in 15 days is determined by first counting, both the total numbers of 911/E911 trunks completed within the reporting interval and the number of 911/E911 trunks completed within 15 days. (as specified on the on the completion notification returned to the CLEC). The resulting count of trunks completed no later than 15 days is divided by the total number of 911/E911 trunks completed with the resulting fraction expressed as a percentage.

**Measurement
Methodology:**

The "Percent (911/E911) Trunk Blockage" monitors overflow situations during the busiest hour of the Reporting Period for those trunk groups accessed by CLEC customers to reach the ILEC 911/E911 office. This metric is computed at the end of the reporting period. It looks at the busiest hour during the reporting period as defined by the highest peg count (call attempts on the trunk group). It then determines for that hour the count of overflow (those call attempts that were blocked due to inadequate trunking, trunks turned down due to maintenance, or other Network failures). It then computes the percentage of blocking for that busy hour. Percentage of blocking for trunk groups is monitored from the CLEC to the ILEC 911/E911 office.

For ILEC Results: the ILEC computation is identical to that for the CLEC with the clarifications noted below.

- Elapsed time is measured in days, hours and hundredths of hours rounded to the nearest tenth of an hour.
- Because this should be a highly automated process, the accumulation of elapsed time continues through off-schedule, weekends and holidays.
- Percentage of blocking for trunk groups is monitored from the ILEC end office to ILEC 911/E911 office and from the ILEC tandem to the ILEC 911/E911 office.

Reporting Dimensions:		Excluded Situations:	
<ul style="list-style-type: none"> • 911/E911 Incoming Trunk Adds • 911/E911 Incoming Trunk Groups • Grade of Service (see Appendix A) 		<ul style="list-style-type: none"> • None 	
Data Retained Relating to CLEC Experience:		Data Retained Relating to ILEC Performance:	
<ul style="list-style-type: none"> • Report Month • Reporting Dimensions • 911/E911 Trunk Order Submission Date • 911/E911 Trunk Order Submission Time • 911/E911 Trunk Order Completion Date • 911/E911 Trunk Order Completion Time • Trunk Group Designation Identifying "to and from" points • Geographic Scope 		<ul style="list-style-type: none"> • Report Month • Average 911/E911 Trunk Order Completion Interval • Reporting Dimensions • Geographic Scope 	
Performance Standard in Absence of ILEC Results:		<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • 911/E911 incoming trunk adds completed within 15 days • Trunk blockage on 911/E911 incoming trunk groups at .5% or less 	

Measurement Detail

Function:	System Availability to the MSAG (Master Street Access Guide)
Business Implications:	<p>The 911/E911 capability works properly when, after having dialed “911”, a customer calling into the Dispatch Center, can accurately have their telephone number associated with the correct street address, and thus receive dispatched help quickly. CLECs need the addresses contained in the MSAG, under the jurisdiction of the ILEC, to be able to associate the correct address with each telephone number. Fast response time in obtaining MSAG information is important in order that the appropriate 911/E911 databases can be updated promptly and accurately.</p>
Measurement Methodology:	<p>Percent MSAG System Availability = [(Hours MSAG is Available to CLECs During Reporting Period)/(Number of Hours MSAG was Scheduled to be Available During Reporting Period)] x 100</p> <p>For CLEC Results: The total “number of hours MSAG was scheduled to be available” is the cumulative number of hours (by date and time on a 24 hour clock) over which the ILEC planned to offer and support CLEC access to ILEC OSS functionality during the reporting period. The ILEC must provide a minimum advance notice of one reporting period regarding availability plans and such plans must be interface-specific. If scheduled availability is not provided with at least one report period advance notice then the default availability for the subsequent reporting period will be seven days per week, 24 hours per day.</p> <p>“Hours Functionality is Available” is the actual number of hours, during scheduled available time, that the ILEC gateway or interface is capable of accepting CLEC transactions or data files for processing in the gateway / interface and MSAG OSS(Operation Support System).</p> <p>The actual time available is divided by the scheduled time available and then multiplied by 100 to produce the “Percent MSAG system availability” measure.</p> <p>For ILEC Results: The “available time” and “scheduled available time” is gathered for the MSAG ILEC OSS during the report period. The MSAG ILEC OSS availability is computed based upon the weighted average availability. That is, the available time for the MSAG is accumulated over the report period and then divided by the summation of the scheduled available time for the MSAG.</p> <p>Other Clarifications and Qualifications:</p> <p>Parity exists if the CLEC “Percent MSAG System Availability “ is equal to or better than ILEC MSAG System Availability.</p> <p>“Capability of accepting” must have a meaning consistent with the ILEC definition of “down time”, whether planned or unplanned, for internal ILEC systems having a comparable potential for customer impact.</p> <p>Time is measured in hours and tenths of hours rounded to the nearest tenth of an hour.</p>

Reporting Dimensions:		Excluded Situations:	
<ul style="list-style-type: none"> • Business Periods (8:00AM to 8:00PM local time versus Off-Hours 8:00PM to 8:00AM, weekends and Holidays) • Geographic Scope 		<ul style="list-style-type: none"> • None 	
Data Retained Relating to CLEC Experience:		Data Retained Relating to ILEC Performance:	
<ul style="list-style-type: none"> • Report Month • Scheduled Hours Available • Actual Hours Available • Percent MSAG CLECAvailability 		<ul style="list-style-type: none"> • Report Month • Scheduled Hours Available • Actual Hours Available • Percent MSAG ILEC Availability 	
Performance Standard in Absence of ILEC Results:		<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • Less than 0.1% of unplanned down time, by interface, during either business period . 	

•Measurement Detail

Collocation Provisioning (CP)

Function:	Physical and Virtual Collocation Commitments Met
Business Implications:	<p>Due to the natural evolution of local telephone services over the years, ILECs own, rent, or lease buildings in most cities and towns. Many of these buildings house ILEC Central Office switches and equipment, giving them an advantage in the immediate marketplace. These same buildings often have extra space, due to technology compressing the size of equipment over time. In order to be able to compete and to install necessary equipment to do so, CLECs need access to space available in ILEC buildings or remote locations. ILECs need to respond in a timely fashion to CLEC requests. Delays will prevent the CLEC from serving customers, and thereby threaten to prevent meaningful competition in the marketplace.</p>

Measurement Methodology:

Mean Response to Request Interval = $\sum[(\text{Request Response Date\&Time}) - (\text{Request Submission Date\&Time})]/(\text{Count of Requests Submitted in Reporting Period})$

Percent Responses Received within 5 Business Days = $[(\text{Count of Responses received within 5 Business Days})/(\text{Count of Requests Submitted in Reporting Period})] \times 100$

Percent Physical Commitments Met = $[(\text{Count of Physical Commitments Met})/(\text{Count of Physical Commitments in Reporting Period})] \times 100$

Percent Virtual Commitments Met = $[(\text{Count of Virtual Commitments Met})/(\text{Count of Virtual Commitments in Reporting Period})] \times 100$

For CLEC Results: The response interval for each space request is determined by computing the elapsed time from the ILEC receipt of a space request from the CLEC, to the time the ILEC returns the requested information to the CLEC. Elapsed time is accumulated for each space request, consistent with the specified reporting dimension, and then divided by the associated total number of space requests received by the ILEC during the report period.

The "Percent Responses Received within 5 Business Days" is determined by first counting, for each specified reporting dimension, both the number of space request responses (via FOCs, Firm Order Confirmation Notices) received within 5 business days, and the number of space requests submitted in the reporting period. For each reporting dimension, the resulting count of space responses received within 5 business days, is divided by the number of space requests submitted in the reporting period and expressed as a percentage.

The "Percent Physical Commitments Met" is determined by first counting, for each specified reporting dimension, both the number of commitments met, and the number of commitments made (via FOCs) in the reporting period. For each reporting dimension, the resulting count of commitments met, is divided by the number of commitments made in the reporting period and expressed as a percentage. The same methodology applies to "Percent Virtual Commitments Met".

For ILEC Results: The ILEC computation is identical to that for the CLEC with the clarifications noted below:

Other Clarifications and Qualifications:

Elapsed time is measured in days and hours.

Measurement Methodology:

Reporting Dimensions:

- FOC for Request of Collocation Space
- FOC Commitment for Construction start
- FOC Commitment for Interconnection to ILEC
- By ILEC Central Office or Remote location
- Geographic Scope

Excluded Situations:

- CLEC cancellations

Data Retained Relating to CLEC Experience:	Data Retained Relating to ILEC Performance:
<ul style="list-style-type: none"> • Report Month • Request Identifier (e.g., unique tracking number) • Request receipt by ILEC, date and time • Request type (per reporting dimension) • Response Date and Time • Commitments made for Physical or Virtual Collocation Construction start • Commitments Met for Physical or Virtual Collocation Construction start • Commitments made for Physical or Virtual ILEC Collocation Interconnection • Commitments Met for Physical or Virtual ILEC Collocation Interconnection • Geographic Scope 	<ul style="list-style-type: none"> • Report Month • Request type (per reporting dimension) • Mean response interval • Geographic scope
Performance Standard in Absence of ILEC Results:	<p>If the ILEC does not deliver direct comparative results or the ILEC has not produced benchmark levels based upon a verifiable study of its own operation as agreed to with the CLEC, then result(s) related to the CLEC operation should be provided according to the following levels of performance in order to provide the CLEC with a meaningful opportunity to compete:</p> <ul style="list-style-type: none"> • Requests for space should be responded to within 5 business days. • Commitments Met should be equal to or better than 98%.

Measurement Detail

Appendix A: Reporting Dimensions

Standard Service Groupings:	Add to LCUG list: ISDN Basic Rate (BRI) <ul style="list-style-type: none">• ISDN Primary Rate (PRI)• Unbundled DS3 Loop• Network Interface Device (NID)• Direct Inward Dialing (DID)• RCF (Remote Call Forwarding) for Ported Numbers• Signaling System 7 (SS7)
Standard Order Activities:	Add to LCUG list: <ul style="list-style-type: none">• Interim Number Portability (INP)
Grade of Service:	<ul style="list-style-type: none">• Interoffice Trunk Groups• Final Trunk Groups• Tandem Trunk Groups• End Office Trunk Groups• 911/E911 Incoming Trunk Groups

Measurement Detail

Appendix B: Glossary

Add to LCUG Document Glossary:

- Completion:** A “completion” is the transaction that the ILEC sends to the CLEC to inform the CLEC that a requested order has been completed. It means that all necessary work associated with an order or work request is done to meet customer requirements. This will include ensuring that Intercept Announcements and all feature changes have been tested and activated.
- Grade of Service:** Trunk group sizing is based on the Engineering criteria of “Grade of Service” and often refers to the mathematical “Poisson Tables” to quantify levels of Service (such as, P.01 GOS which equates to 1 in 100 “blocked calls”, or 1% blockage).

Georgia PSC Docket 6863-U
BST Hearing Request
January 30, 1997
Page 1 of 1

REQUEST: Please provide a copy of BST's Letter of Agreement form for Property Management Services.

RESPONSE: Please see the attached form.

LETTER OF AGREEMENT

THIS AGREEMENT, which is dated and effective as of _____, 19__, is made between BellSouth Telecommunications, Inc. ("BellSouth"); and _____ ("Property Management"); hereinafter referred to collectively as the "Parties"; in contemplation of the following:

- A. The real estate property covered by this agreement is described as the _____, which is located at _____.
- B. Property Management is engaged in the leasing and management of office space to tenants and desires to retain and attract building tenants with high-quality, value-added local telecommunications technologies and support services.
- C. BellSouth intends to provide reliable, high-quality, value added, telecommunications technologies and support services to building tenants as requested as Property Management's designated provider of choice for communications products and services to the _____ property.
- D. Both Parties wish to engage jointly in improving the quality of the collective services provided to building tenants and in promoting the property and the BellSouth telecommunications products, services, and support as value-added amenities to tenants.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, BellSouth and Property Management hereby mutually agree as follows:

1. The term of this Agreement shall be one (1), two (2) or three (3) years (delete as appropriate) commencing on _____. Inasmuch as close cooperation between the Parties is essential to the success of the alliance, if either Party shall, in its sole discretion, find that the alliance is not satisfactory, either Party shall have the right to terminate this Agreement by giving thirty (30) days written notice, one to the other. Upon such termination, Property Management shall forfeit all remaining incentive credits as described in Paragraph 3, shall immediately cease using BellSouth registered names and marks as described in Paragraph 10, and shall return, or certify destruction of, any media bearing BellSouth names and marks. This agreement may be extended at any time by mutual written agreement. Property Management agrees to provide BellSouth with access to building entrance conduits, equipment room space, and riser/horizontal conduits as required for placement of telecommunications facilities to meet the needs of building tenants. Such access shall be provided at no cost to BellSouth.
2. BellSouth agrees to establish and maintain an incentive Credit Fund for use by Property Management consisting of (1) an annual signing bonus of \$_____ beginning with the execution of this agreement and on the anniversary of each subsequent year for the term of this agreement, and (2) annual occupancy space credits of \$.05 per square foot of tenant occupied space (rentable area) using BellSouth services. For purposes of this agreement rentable area refers to that actual usable measured space within a tenants space. The tenant occupied space credits shall be computed once each year based on the tenants existing occupied space upon the execution of this Agreement, and on the anniversary of each subsequent year, in the building (s) covered by this Agreement. The Credit Fund shall be used in a manner consistent with the objectives and goals of this plan. Credit Fund amounts can be used by Property Management, or upon Property Management request, by specified tenants of the building to be applied to purchases of BellSouth requested services including service installation charges and/or monthly service fees; towards Property Management and/or building tenant attendance at BellSouth-sponsored seminars; or, for reimbursement of Property Management costs for advertisements or newsletters, or other promotional efforts mutually agreed upon by BellSouth and Property Management. Billing credits shall not be accrued from year to year with respect to this Agreement. Unused annual credit amounts will expire at midnight on the day preceeding the anniversary date of each year. BellSouth further agrees to provide Quarterly reports to Property Management regarding the current status of the credit fund, and remaining credits. All provisions of this paragraph are subject to compliance with all applicable state and federal laws and regulations governing BellSouth's participation in these activities.
3. Property Management agrees to designate BellSouth as the provider of choice for local telecommunications services to building tenants at _____ and promote BellSouth as such. Property Management further agrees not to enter into a similar agreement with any other telecommunications vendor to perform the activities provided for in this Agreement for the term of this Agreement.
4. BellSouth shall designate a management representative as a point-of-contact for Property Management and building tenants with responsibility for management and administration of all BellSouth responsibilities in connection with the implementation of this Agreement. Property Management shall designate an appropriate contact to work with the BellSouth representative.

Upon commencement of the Agreement, each Party will give written notice of the identity of their designated contact to the other Party.

5. Upon commencement of this Agreement, Property Management, at its expense, shall provide to BellSouth, all contact information, introductions, and, as permitted, all information about tenant occupied space and number of employees for all existing tenants at _____. As lease proposals are submitted to prospective tenants, Property Management, will ask for the prospect's approval to provide BellSouth's designated representative the name, address, telephone number, and contact person of such prospect. BellSouth shall hold all such information as strictly confidential and shall not divulge such information to any third party or utilize such information for any purposes not contemplated by this Agreement. In the event a prospective tenant declines to have certain information provided to BellSouth at the time of lease proposal, Property Management agrees to provide all information authorized by the tenant to BellSouth as soon as such information is made available to Property Management.
6. BellSouth shall, at its expense, develop tenant survey media and conduct tenant quality review surveys on a semi-annual basis to determine ways to improve tenant telecommunications service at _____. Property Management, at its option, may elect to participate jointly in BellSouth quality surveys at no cost. To the extent legally permitted, BellSouth agrees to provide Property Management with survey results. Subject to the foregoing, following each survey, BellSouth and Property Management agree to discuss and for joint surveys, develop coordinated plans to improve tenant satisfaction. BellSouth, at its expense, agrees to undertake a personal contact program with all tenants upon commencement of this Agreement and, thereafter, agrees to periodic contacts and follow up as necessary as a result of feedback from tenants.
7. BellSouth shall, at its expense, develop and provide promotional materials including, but not limited to, brochures and newsletters which describe advanced telecommunications services available to tenants and benefits of the alliance, and will provide ongoing information to tenants about the alliance and new BellSouth products and services. Upon request by Property Management, and if feasible, BellSouth shall, at its expense, provide telecommunications planning/consulting, sales proposal, presentation, and contact support to Property Management for requested tenant lease proposals. The parties understand that BellSouth does not provide InterLATA services. Property Management agrees to never infer or represent that BellSouth provides InterLATA services, designs InterLATA networks, or recommends any InterLATA service providers.
8. Property Management, at its expense, shall distribute all promotional materials provided by BellSouth to existing and prospective or new tenants during and after lease negotiations. Property Management and BellSouth further agree to cooperate in the development and distribution of introductory letters, tenant surveys, and other tenant communications as required to effectively promote the objectives of the alliance.
9. Property Management agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the trade names, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of BellSouth Corporation and/or any of its affiliated companies, and Property Management further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without BellSouth's prior written consent. BellSouth shall have the right to use Property Management's name and associated marks for _____ in BellSouth publicity and advertising materials subject to the prior review and written approval of Property Management.
10. Even though Property Management shall recommend BellSouth as the provider of choice for local telecommunications services to tenants, nothing in this Agreement shall be construed to preclude any building tenant from obtaining telecommunications services from others legally authorized to provide such services.
11. Both Parties agree to hold this Agreement, and all specific details and compensation provisions of such agreement as confidential, proprietary information not to be divulged to any third party for a period of three (3) years from the termination of this agreement unless with the express written consent of the other Party. Other aspects of this Agreement may be disclosed as mutually agreed upon in writing.
12. This Agreement shall not be construed to create a joint venture, general partnership, or create the relationship of principal and agent between the Parties hereto. This Agreement is strictly for the purpose of permitting joint promotional and marketing activities as well as to provide for the installation of telecommunications facilities and services.
13. Each party agrees to indemnify and hold harmless the other party from and against any loss, costs, damages, claims, expenses (including attorneys' fees) or liabilities by reason of any injury to or death or disease of any person, damage to or destruction or

loss of any property or any other damages arising out of, resulting from, or in connection with the performance or nonperformance of the obligations contemplated by this Agreement which is caused in whole or in part by an act, omission, default or negligence of the party or its employees, the failure of the party to comply with any of the terms and conditions herein or the failure to conform to statutes, ordinances, or other regulations or requirements of any governmental authority in connection with the performance of the obligations provided for in the Agreement. Each party shall, at its own cost, expense, and risk, defend any claim, suit, action or other legal proceeding for which that party is hereunder obligated to indemnify an indemnitee.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representative as of the date first written above.

For BellSouth Telecommunications, Inc.:

For Property Management:

By its Authorized Agent, BellSouth Business Systems Inc.

By: _____
(Signature)

By: _____
(Signature)

By: _____
(Printed Name)

By: _____
(Printed Name)

Title: _____

Title: _____

Georgia PSC Docket 6863-U
BST Hearing Request
January 30, 1997
Page 1 of 1

REQUEST: Please provide a copy of BellSouth Telecommunications' Authorized Sales Representative Agreements.

RESPONSE: Please see the attached samples of BST's Authorized Sales Representative Agreements. Both an exclusive and nonexclusive agreement is provided.

APPENDICES		
APP A	Authorized Marketing Areas	1 of 13
APP A.1	Req. Market in Unauthorized Areas	2 of 13
APP B	Sales Commissions	3 of 13
APP C	Sales Terms and Conditions	10 of 13
APP D	General Support Levels	11 of 13
APP E	Nondiscrimination Compliance	12 of 13
APP F	Gratuities and Lobbying	13 of 13

WHEREAS, COMPANY is engaged in the business of marketing and providing basic telecommunications services; and, WHEREAS, REPRESENTATIVE is in the business of marketing and providing customer premises equipment (CPE) and desires to become an authorized marketing representative of COMPANY for the sale of certain services pursuant to this Agreement with COMPANY; and, WHEREAS, COMPANY wishes to engage REPRESENTATIVE to promote the sale of certain services described herein. NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby mutually agree as follows:

1. APPOINTMENT OF REPRESENTATIVE

- A. 1. COMPANY hereby appoints REPRESENTATIVE as an authorized representative in the geographic area(s) designated in Appendix A of this Agreement to promote the retail sale of and to solicit orders for such service offerings and related services set forth in Appendix B of this Agreement ("Service").
2. Any changes to the geographic area(s) designated in Appendix A of this Agreement must be agreed to and approved in writing by the parties. Such written approval will take the form set forth in Appendix A.1 of this Agreement. Any additional terms and conditions set forth in Appendix A.1 shall control, to the extent they do not conflict with this Agreement.
3. COMPANY reserves the right to alter the terms, conditions or rates, or apply for regulatory approval as may be necessary to alter such terms, conditions or rates for the described Service at any time. In the event any of the described Services are altered either with respect to the terms, conditions, qualifications or prices relating thereto, COMPANY reserves the right to alter or eliminate the amount of commissions paid for sale of such services as the COMPANY in its sole discretion deems appropriate. REPRESENTATIVE has the option to terminate this Agreement if it does not desire to continue the relationship as altered.
- B. REPRESENTATIVE hereby accepts such appointment and agrees to exert reasonable efforts to promote, on COMPANY's behalf, the marketing of Service and to service, in the manner described in Section III of this Agreement, all customers purchasing service through REPRESENTATIVE.
- C. COMPANY is legally prohibited from engaging in any interLATA service or business. REPRESENTATIVE expressly acknowledges COMPANY's legal obligations and agrees to only offer COMPANY's network services in conjunction with COMPANY-permitted activities. REPRESENTATIVE agrees never to represent or infer to the customer that COMPANY provides any interLATA service, recommends any interLATA service or service provider, or designs interLATA services. Any such marketing or design of interLATA services shall be conducted separately from the activities governed under this Agreement. If, in the future, COMPANY is permitted to engage in integrated intraLATA and interLATA services or businesses, COMPANY reserves the right to amend this Agreement to include such services, and to the extent permitted by law, all terms and conditions relating to REPRESENTATIVE's sale of all other COMPANY services shall automatically apply thereafter to such interLATA services that may be offered by COMPANY.
- D. It is also understood between the parties that COMPANY may actively continue to market, promote, and obtain contracts for Services in the geographic areas designated in Appendix A through COMPANY's own sales force, its affiliates and/or subsidiaries or through other representatives.
- E. COMPANY and REPRESENTATIVE agree that the relationship between them arising from this Agreement is that of independent contractors. Except for the rights retained by or granted to, and the

obligations undertaken by, each party pursuant to this Agreement, neither has any right or any authority to enter into any contract or undertaking in the name of or for the account of the other or to assume or create any obligation of any kind, expressed or implied, on behalf of the other, nor shall the acts or omissions of either create any liability for the other. REPRESENTATIVE shall business at its own initiative, responsibility, and expense. All persons furnished by REPRESENTATIVE to perform the obligations required or permitted under this Agreement shall be considered solely REPRESENTATIVE's employees unless otherwise authorized by COMPANY. REPRESENTATIVE shall at all times remain responsible for compliance with all terms, conditions and obligations of this Agreement. Subcontracting by REPRESENTATIVE, in any form, of any of REPRESENTATIVE's obligations, in whole or in part, without COMPANY authorization, is expressly prohibited and constitutes breach of this Agreement. For purposes of this section, the term subcontracting means delegating the work required or permitted under this Agreement to any person or third party not employed by REPRESENTATIVE. REPRESENTATIVE is not authorized to unilaterally abdicate its active sales and support obligations through relationships with third party individuals or companies operating independently of REPRESENTATIVE.

II. TERM.

If REPRESENTATIVE chooses option A or B in Section XIII, the term of this Agreement shall commence when executed by both parties, and shall continue thereafter through December 31, 1998, or until terminated as provided for under this Agreement. If REPRESENTATIVE chooses option C in Section XIII, then the term of this Agreement shall commence when executed by both parties. In either case this Agreement will be automatically renewed at the end of the original term and on the same date annually thereafter for successive one year terms unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. COMPANY may cancel this Agreement for cause immediately upon giving notice as provided in Section XI.C

III. REPRESENTATIVE'S RESPONSIBILITIES

A. REPRESENTATIVE agrees that:

1. It will employ and train a sufficient communications sales force and staff as agreed upon by COMPANY and REPRESENTATIVE to market COMPANY - specific services and to provide adequate marketing coverage for prospective Service customers;
2. It will provide customer relations and Service support functions including, where applicable, but not limited to: i) coordination of adequate initial customer training on proper use of Services; ii) continuing Service system consulting; iii) periodic personal contacts with customers; iv) provision to customers of available information regarding technical, functional, and other Service developments; and v) handling of requests from customers for network service revenue; and

3. It will provide marketing services satisfactory to COMPANY and that REPRESENTATIVE will take action as needed to meet customers' service requirements and to ensure that customers' service is properly coordinated to customers' satisfaction. REPRESENTATIVE further agrees that it will, in good faith, use its best efforts to take all reasonable steps necessary to ensure the customer is satisfied at all times, with regard to COMPANY's Service.
4. It will specify, in Section XIII of this Agreement, whether in the sale of intraLATA network services, in the areas served by COMPANY, it elects to market such intraLATA services exclusively on behalf of COMPANY or to also market or otherwise promote some or all of the intraLATA network services of other providers.
5. If REPRESENTATIVE elects to market some or all of the intraLATA network services exclusively for COMPANY, pursuant to its election of option A or B in Section XIII REPRESENTATIVE will not market the applicable intraLATA services of another provider, except in those instances where COMPANY does not provide a similar functional service in the area served by COMPANY, in which case REPRESENTATIVE may, with COMPANY's written consent, and only for so long as COMPANY does not have a similar functional service, in the area served by COMPANY, market the applicable intraLATA service of another provider, and REPRESENTATIVE will not take any action, in return for compensation of any type from another provider, which would result in an end user's applicable intraLATA service being provided in any way using the services of any provider other than COMPANY. Failure to comply with the above commitment shall be grounds for conversion of REPRESENTATIVE to non-exclusive status or termination of this Agreement, at the COMPANY's discretion.
6. If REPRESENTATIVE elects to market and otherwise promote exclusively some or all of the intraLATA network services of COMPANY pursuant to its election of A or B, in Section XIII, REPRESENTATIVE may, in addition to non-recurring commissions, receive payment of performance bonuses and/or residual commissions as set forth in Appendix B, so long as REPRESENTATIVE satisfies the criteria for receipt of such bonuses, and/or residual commissions as further described in COMPANY's then existing operations standards. For purposes of this Agreement, residual commissions shall mean quarterly or monthly, at COMPANY's discretion, payments to REPRESENTATIVE for services sold by REPRESENTATIVE for as long as the customer retains such service or REPRESENTATIVE remains an authorized sales representative under option A or B, in Section XIII, whichever is shorter, but not, in any event, to exceed the term of this Agreement. Also COMPANY support levels will vary depending on the option chosen by REPRESENTATIVE. General support level categories applicable to the various options available in Section XIII are found at Appendix D. More specific explanations of the support levels will be provided in COMPANY's then existing operations standards.
7. REPRESENTATIVE acknowledges that COMPANY grants certain of the rights herein in material part in consideration of REPRESENTATIVE's Agreement to act exclusively for COMPANY in marketing some or all of COMPANY's intraLATA network service. As a consequence, during the term of this Agreement, and any extensions thereof, any REPRESENTATIVE electing exclusive option A or B in Section XIII agrees that neither REPRESENTATIVE nor its affiliates, or persons owing a controlling interest in REPRESENTATIVE or an affiliate shall, directly or indirectly, (a) solicit, sell, offer or accept offers for any applicable Competitive Service in the Area served by COMPANY, (b) induce or refer any actual or prospective Subscriber of COMPANY network services to subscribe to any applicable Competitive Service of another in the Area served by COMPANY, (c) provide any subscriber leads to any applicable Competitive Service in the Area, or (d) activate Subscribers through a reseller or act as a reseller of Service, whether for applicable telecommunications service any person, entity, or business (other than COMPANY) in the Area, including without limitation any facilities-based carrier, any reseller, or any agent thereof, which uses technology technically capable of providing the functional equivalent of COMPANY's services in any way. These provisions and covenants shall apply so long as Representative remains an intraLATA exclusive sales representative under either option A or B in Section XIII. Also, upon termination of this Agreement, or upon an exclusive REPRESENTATIVE's conversion to non-exclusive status, or attempt to assignment this Agreement, paragraph 10 shall apply.
8. If REPRESENTATIVE elects to also market or otherwise promote the intraLATA network services of other providers, in the areas not served by COMPANY, the compensation and general support levels associated with such options shall be as set forth in Appendices B and D. More specific explanations of the support levels applicable to the specific option chosen will be provided in COMPANY's then existing operation standards. Such support levels shall be offered solely at COMPANY's discretion and shall be offered when and to the extent deemed appropriate.
9. During the effective period of this Agreement, or any extension thereof, a REPRESENTATIVE may change its status from non-exclusive to exclusive and vice versa. However, such change shall be prospective only. For changes from non-exclusive to exclusive status, this means, but is not limited to, payment of residual commissions will be made for applicable network services sold by REPRESENTATIVE after the change, but no residual commissions will be paid for REPRESENTATIVE's base of otherwise applicable network services in place at the time the change is made. For changes from exclusive to non-exclusive status, any residual commissions previously being paid shall be discontinued after

the date REPRESENTATIVE's status changes to non-exclusive.

10. If this Agreement is terminated by COMPANY in accordance with the provisions of this Agreement or by an exclusive intraLATA REPRESENTATIVE for any reason, or if this Agreement is transferred or assigned by an exclusive /intraLATA REPRESENTATIVE, or if REPRESENTATIVE converts from exclusive to non-exclusive status, REPRESENTATIVE shall in no way, directly or indirectly, take any action to cause customers to whom COMPANY's Service was sold by REPRESENTATIVE under this Agreement to divert such existing Service to another network provider in competition with COMPANY. This provision shall extend for a period of one (1) year from the effective date of such termination or change in status

B. If in a particular sales case the REPRESENTATIVE has failed to satisfactorily provide adequate customer service, as defined by the COMPANY in written guidelines and shared with REPRESENTATIVE, or has received commissions that were not earned, the COMPANY may recapture any sales commissions paid to the REPRESENTATIVE for such sale or deduct any fees previously paid for such sale from any future amounts owed to the REPRESENTATIVE. Repeated instances of inadequate customer service shall be grounds for termination, at the sole discretion of COMPANY.

C. All activities of REPRESENTATIVE shall be in compliance with any applicable provisions of COMPANY tariffs and such sales, service, engineering, performance and operations standards promulgated by COMPANY as may be in effect from time to time and provided to REPRESENTATIVE. Failure of REPRESENTATIVE to comply with any of the above-related provisions shall be grounds for termination, at

discretion of COMPANY.

D. REPRESENTATIVE warrants and represents to COMPANY that any and all orders submitted to COMPANY for Service for a customer shall be at the direction of and at the request of the customer. Any service placed without a letter of agency from the customer, which letter of agency must be signed by the customer, may be immediately disconnected by COMPANY as soon as COMPANY is aware that the service order was not so authorized by the Customer. COMPANY shall be entitled to recapture any commissions paid to REPRESENTATIVE for the improperly ordered Service, and any and all costs, charges and administrative expenses incurred by COMPANY in adjusting the customer's account. REPRESENTATIVE also acknowledges that placement of an order, without authorization from the customer will cause COMPANY irreparable harm and damage to its good will. Any orders placed without authorization will constitute a breach of this Agreement.

E. REPRESENTATIVE agrees to successfully complete any training or certification or program(s) outlined or required from time to time by COMPANY. COMPANY reserves the right to modify any

such requirements from time to time, without prior notice to REPRESENTATIVE. REPRESENTATIVE may terminate the Agreement if the terms of any revised certification requirements are deemed unacceptable to REPRESENTATIVE.

- F. REPRESENTATIVE's sales volume or other value-added performance targets may consist of a net revenue objectives or other value-added performance objectives, which shall be determined on an annual basis by COMPANY. REPRESENTATIVE agrees to exert its best efforts to meet these performance objectives. Continued failure to attain the performance levels set by COMPANY shall be grounds for termination of this Agreement, at the sole discretion of COMPANY.

IV. PRICES, TERMS OF SALE, COMMISSIONS

A. PRICES.

1. The prices at which Services will be provided by COMPANY to customers shall be the prices authorized by COMPANY's state tariffs in effect from time to time. COMPANY reserves the right at any time to seek regulatory approval to change the specifications of Service as shown in COMPANY's state tariffs to conform to current characteristics of Service, to alter or eliminate Service or any aspect thereof, or to change any Service rates. In the event of such a change, COMPANY reserves the right to alter or withhold commissions pursuant to Section I.A.3. and Section IV.C.2.
2. COMPANY shall inform REPRESENTATIVE, from time to time, and at least thirty (30) days before the effective date of such change(s), of any change(s) in the terms upon which it is willing to accept orders for Service, including payment and standards of credit worthiness, physical availability of Service, order format, data requirements, and other specifications.

B. ORDERS AND ACCEPTANCE.

1. ORDER PROCESS. All orders entered by REPRESENTATIVE from its customers shall be in conformance with the terms specified by COMPANY. REPRESENTATIVE shall determine availability of Service on the basis of information received from COMPANY. All orders shall be placed through COMPANY's Vendor Service Center ("VSC") and shall be subject to availability, approval, and acceptance by COMPANY. Only orders coordinate COMPANY's VSC will be eligible for payment of compensation as provided in subparagraph C. In the event an order submitted by REPRESENTATIVE is rejected, COMPANY will supply REPRESENTATIVE with a specific reason therefor.
2. CREDIT INFORMATION. At COMPANY's request, and with customer permission, REPRESENTATIVE shall obtain accurate and appropriate credit information from any customer as specified by COMPANY, which REPRESENTATIVE shall forward to COMPANY with the order. All credit must be approved by COMPANY and COMPANY reserves the right to

deny credit to any customer, to require deposits, or to modify its credit terms as it deems appropriate, or in accordance with the rules and regulations approved by the Public Service Commission of the state in which this Agreement is to be performed. REPRESENTATIVE does not hereby guarantee the credit of any customer, but does warrant that it will use reasonable efforts to obtain, and believes that it will obtain, accurate credit information from reliable sources.

3. REPRESENTATIVE shall coordinate any necessary installation of REPRESENTATIVE's Customer Premises Equipment (CPE) with installation of any Service to be provided by COMPANY, and shall perform feature tests upon completion of installation in a manner acceptable to COMPANY.

C. COMMISSIONS.

1. Except as otherwise provided below and in Section I.A.3. and IV.C.2. of this Agreement, COMPANY shall pay REPRESENTATIVE compensation in accordance with the applicable Commission Schedule terms contained in Appendix B of this Agreement, which shall apply depending on the option chosen by REPRESENTATIVE in Section XIII herein. Notwithstanding the foregoing, for all sales of ESSXO services with contractual periods, COMPANY reserves the right to recapture any recurring or non-recurring commissions, on a pro rata basis, for sales made to a customer who orders Service removed prior to the expiration of a contractual agreement. Amounts due hereunder shall be paid by COMPANY to REPRESENTATIVE in no less than thirty (30) days and no later than forty-five (45) days from the end of the month in which an order is considered to be "firm". A "Firm" order shall be defined as the date the order for service is accepted by COMPANY and input into COMPANY's ordering system.
2. COMPANY may, from time to time, offer specially discounted services, services for special purposes, or services with changed terms and conditions, either at its own initiative or pursuant to applicable laws or commission orders. Due to the unique circumstances surrounding the provision and pricing of such services, commissions for sales of these special services will not be offered, unless expressly authorized by COMPANY. Specially discounted services or special services are defined as service provided pursuant to special tariffs, i.e., special assemblies, or service offerings that otherwise differ in terms, conditions, qualifications or prices from the non-discounted Services listed in Appendix B.
3. Sales commissions may not be earned by REPRESENTATIVE, or by any other authorized sales representative, and shall not be paid by COMPANY for sales of services to REPRESENTATIVE for its own use, for sales of services to REPRESENTATIVE's affiliate's use, or for sales of services on behalf of, or to be used by, another sales representative participating in COMPANY's sales agency program.

4. Sales commissions may not be earned by REPRESENTATIVE, and shall not be paid by COMPANY for "sales" of Service negotiated by a third party for a prospective customer and REPRESENTATIVE is acting as a conduit for such previously negotiated sale.
5. Initial commissions will be due and payable to REPRESENTATIVE only for sales made for Service which results in additional revenue to COMPANY. No commissions will be paid for the sale of any Service which merely replaces existing revenue. Residual commissions shall be earned and limited as set forth in Section III.

V. QUALITY OF SERVICE

A. QUALITY.

REPRESENTATIVE agrees that at all times it will maintain a level of quality of service to its customers satisfactory to COMPANY, in accordance with reasonable standards promulgated by COMPANY and then in effect, and will take and permit to be taken by COMPANY all actions reasonably requested in order to ensure adequate opportunity for review of REPRESENTATIVE's performance by COMPANY, including, but not limited to, periodic review and analysis by COMPANY of the customer service provided by REPRESENTATIVE. Failure to maintain a level of quality satisfactory to COMPANY may, at COMPANY's option, result in termination of this Agreement as provided herein.

B. TRAINING.

In order to ensure the level of quality of service to its customers as required by Section V.A. above, REPRESENTATIVE agrees to attend any training or certification required from time to time by COMPANY. REPRESENTATIVE acknowledges its responsibility and obligation to maintain a high level of expertise, through whatever training is needed, in order to effectively market Service to COMPANY's customers. Any special training required by COMPANY will be made reasonably available to REPRESENTATIVE. REPRESENTATIVE may be responsible for the costs associated with such training, including travel, room and board.

VI. ADVERTISING AND PROMOTION

- A. COMPANY may supply REPRESENTATIVE from time to time, at its current charge, if any, with a reasonable number of brochures, price lists, and other material necessary for promoting the sale of Service. Any portion of the foregoing material which remains unused at the time COMPANY makes changes in Service pursuant to the provisions of this Agreement or upon the termination of this Agreement for any reason by either party, shall be promptly returned to COMPANY or certified as destroyed. Company may, in its sole discretion, enter into advertising and promotional campaigns with REPRESENTATIVE under terms and conditions agreed to by the

parties. Under no circumstances is COMPANY obligated or required to advertise, market or promote for or on behalf of REPRESENTATIVE.

- B. As part of its efforts to market Service, REPRESENTATIVE may develop and undertake, at its own expense, an advertising campaign including any Service advertising theme as may be adopted by COMPANY. All Advertising programs of REPRESENTATIVE referring to Service must be approved in advance by COMPANY, or COMPANY's representative, and clearly comply with the advertising guidelines as developed by COMPANY from time to time, with respect to any reference to Service. REPRESENTATIVE agrees that COMPANY shall have the right, without further compensating REPRESENTATIVE, to include in advertising by COMPANY or any of COMPANY's affiliates reference to REPRESENTATIVE's status as a Service representative and REPRESENTATIVE'S involvement with Service.
- C. Notwithstanding the foregoing, failure of REPRESENTATIVE to obtain prior written approval by COMPANY, or its designated representative, of REPRESENTATIVE's advertising program or any specific advertising mentioning COMPANY or its Service shall result in breach of this Agreement. REPRESENTATIVE acknowledges and agrees that COMPANY will suffer irreparable injury and harm by any improper advertising or use of COMPANY's name or logo and that such damages will be difficult to calculate. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it may deem appropriate.
- D. COMPANY may provide supporting advertising and promotional assistance as deemed appropriate depending on the option chosen by REPRESENTATIVE in Section XIII.

VII. COMPANY'S MARKS

A. USE OF MARKS.

Depending on the option chosen by REPRESENTATIVE in Section XIII, COMPANY may from time to time provide a list of Names and Marks (collectively, the "Marks") which REPRESENTATIVE is authorized to use under this Agreement in conjunction with the sale of COMPANY's Services. Whether and to what extent COMPANY's Marks may be used by REPRESENTATIVE shall be further defined in Appendix D and in the COMPANY's then existing operations standards. COMPANY may periodically update the list of Marks. REPRESENTATIVE is authorized to use under this Agreement. The most currently updated list will always supersede any previously issued list. Such list will also be supplemented with rules and regulations pertaining to the Marks which REPRESENTATIVE agrees to follow. COMPANY authorizes REPRESENTATIVE to use the Marks solely in conjunction with the advertising and sale of COMPANY'S Services bearing the Marks pursuant to the terms hereof. REPRESENTATIVE shall strictly comply with all graphic standards for the Marks which may be

furnished from time to time and shall place appropriate trademark and service mark notices relating to the Marks as instructed. All media advertising and printed material in which the Marks are used shall be submitted to COMPANY for review in advance and shall not be distributed or used in any manner without the prior written approval of COMPANY. Any use of the Marks which is not authorized herein or by an authorized representative of COMPANY shall be strictly prohibited. Any use of the Marks which is inconsistent with the terms hereof shall be grounds for immediate termination of this Agreement. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it deems appropriate. Any failure to select any of these remedies on any occasion shall not constitute a waiver of COMPANY's rights under this paragraph.

B. PROCEDURE ON TERMINATION.

Upon the expiration, termination or cancellation of this Agreement, REPRESENTATIVE shall immediately cease all uses of the Marks and shall promptly return to COMPANY or destroy all printed material and other tangible items bearing the Marks and shall certify same in writing to COMPANY within thirty (30) days of the expiration, termination or cancellation date.

C. LIMITATION TO U.S.

Services bearing the Marks are being distributed through REPRESENTATIVE for sale in the United States only. These Services shall not be distributed by REPRESENTATIVE for sale in other countries without the prior written consent of COMPANY.

D. NO INTEREST IN MARKS.

REPRESENTATIVE recognizes that nothing contained in this Agreement is intended as an assignment or grant to REPRESENTATIVE of any right, title or interest in or to the Marks or the goodwill attached thereto and that this Agreement does not convey the right to REPRESENTATIVE to grant sublicenses and is not assignable. No licenses or other intellectual property rights, express or implied, are granted by either party to the other, except as provided for in this Agreement. REPRESENTATIVE further recognizes that all use of the Marks by REPRESENTATIVE shall inure to the benefit of, and be on behalf of, COMPANY and its parent, BellSouth Corporation. REPRESENTATIVE recognizes the validity of, and will do nothing inconsistent with, BellSouth Corporation's ownership of the Marks, and acknowledges that COMPANY shall have the right to immediately terminate this Agreement in the event that, in COMPANY'S opinion, REPRESENTATIVE acts in a manner which would negatively impact the reputation of BellSouth Corporation or any of its affiliates or would infringe or dilute the value of any of the Marks.

VIII. TERMINATION

- A. Except as set forth in Section XI.G. herein, and subject to the post

termination obligations, including but not limited to, Section III.A.10, this Agreement may be terminated without cause by either party at any time, immediately upon the giving of 30 days written notice, pursuant to Section XI.C., to the non-terminating party. The COMPANY may terminate this Agreement for cause immediately upon notice to REPRESENTATIVE.

- B. No failure or delay by either party in sending any notice specified in paragraph A. above shall constitute a waiver of rights to terminate this Agreement.
- C. COMPANY may, at its option, terminate this Agreement if at any time during the term of this Agreement or any extension hereof, REPRESENTATIVE attempts, without COMPANY approval, to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party, or REPRESENTATIVE has any change in ownership made by merger, acquisition, or otherwise or if REPRESENTATIVE or any principal owner of REPRESENTATIVE has or acquires a 5% or greater ownership interest in any company providing or capable of providing services in competition with COMPANY in the areas served by COMPANY. REPRESENTATIVE agrees to promptly notify COMPANY in writing and in advance of any proposed changes in ownership or of any proposal to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party. No new owners or successor companies shall have any right to expect a continuation of this Agreement, or any transfer of the rights or obligations of REPRESENTATIVE under this Agreement without the prior written consent of COMPANY.
- D. No termination of this Agreement shall affect an obligations of either party as of the effective date of such termination, nor shall it affect any rights or obligations of either party which are intended by the parties to survive any such termination. In particular, but not by way of limitation, no such termination shall act to nullify or discharge the post-agreement rights and obligations of the parties contained in this Agreement, including, but not limited to the indemnification and non-competition provisions of this Agreement.
- E. Neither party possesses nor shall be deemed to possess any right of property in or incident to this Agreement, and the parties agree that any termination of this Agreement according to the formalities specified herein, and based on the conditions required by the provision under which such termination is effected, shall not constitute an unfair or abusive termination or create any liability of the terminating party to the terminated party not set forth in this Agreement.
- F. The right of either party to terminate this Agreement is not an exclusive remedy, and either of them shall be entitled, alternatively or cumulatively, to damages for breach of the Agreement, injunction, or other court order requiring performance of obligations of this Agreement or other remedy under the laws of the state of Georgia.
- G. REPRESENTATIVE and COMPANY agree that upon the expiration or termination of this Agreement: (1) REPRESENTATIVE will not thereafter use any actual or similar trade name, service mark,

trademark, logo, insignia, symbols or decorative designs theretofore used by REPRESENTATIVE in the conduct of its business pursuant to this Agreement, in any manner or for any purpose except that REPRESENTATIVE may use or continue to use any trade name, service mark, trademark, logo, insignia, symbols or decorative designs REPRESENTATIVE or its owners lawfully used in any business prior to the date of this Agreement; (2) neither REPRESENTATIVE nor COMPANY will utilize for any purpose any actual or similar trade name, trade or service mark or other commercial symbol that in any manner might cause either party or any part of their business to be identified as associated with the other party; and (3) REPRESENTATIVE and COMPANY will return to each other party, or certify in writing the destruction of, all advertising and marketing materials, forms, and other materials identifying or relating to the other party or the other party's Service.

IX. PROTECTION PROVISIONS

A. CONFIDENTIALITY/NONDISCLOSURE.

1. All information disclosed by COMPANY to REPRESENTATIVE pursuant to this Agreement, other than such information as may be generally available to the public or the industry or as may be intended by COMPANY to be disclosed by REPRESENTATIVE pursuant to Section V. hereof, is and will be disclosed to REPRESENTATIVE in confidence solely for REPRESENTATIVE's use in the conduct of its business as a Service representative. REPRESENTATIVE agrees to keep such information ("Information") secret and confidential indefinitely and not to disclose it to any other person or use it during the term of this Agreement or for one year after its termination except in carrying out its obligations hereunder or in response to obligations imposed by COMPANY's state tariffs or order of a court or regulatory body.
2. REPRESENTATIVE shall take effective precautions, contractual and otherwise, reasonably calculated to prevent unauthorized disclosure or misuse of such Information by any of its employees or by any other person having access to such information.
3. Within ninety (90) days after the expiration or the termination of this Agreement by either party for any reason, REPRESENTATIVE agrees promptly to return to COMPANY, or to certify the destruction of, any physical or confidential information provided by COMPANY to REPRESENTATIVE. In addition, REPRESENTATIVE shall return any signage or other printed materials containing any BellSouth names, logos, or Marks, and shall thereafter cease using any such information or materials.
4. If REPRESENTATIVE is served with process to obtain such Information, REPRESENTATIVE shall immediately notify COMPANY which shall, in addition to REPRESENTATIVE's efforts, if any, have the right to seek to quash such process, or to take such other actions necessary to protect the confidentiality of the Information.

5. REPRESENTATIVE hereby acknowledges and agrees that in the event of its breach of its obligations of confidentiality under Section VIII.A., COMPANY's remedies at law may be inadequate and COMPANY will be entitled to injunctive relief. Any information furnished or disclosed by REPRESENTATIVE to COMPANY shall not obligate COMPANY to hold such information in confidence, unless marked thereon as "proprietary". In the event that any information is furnished or disclosed by REPRESENTATIVE to COMPANY which is marked "proprietary" then the same rights, obligations, terms, and conditions set forth herein will apply to said information as applies to the Information supplied by COMPANY to REPRESENTATIVE.

B. INVENTIONS AND PATENT RIGHTS.

1. REPRESENTATIVE shall not be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in or to any design, invention, improvement, process or system now or hereafter embodied in Service, whether or not such design, invention, improvement, process or system is patented or patentable under the law of any country.
2. COMPANY agrees to indemnify, defend, and hold REPRESENTATIVE harmless from any and all liability for any claims, demands or suits (collectively the "claims") against REPRESENTATIVE alleging that Service offerings and related services provided by COMPANY pursuant to the terms of this Agreement and sold by REPRESENTATIVE infringe a United States patent or trade secret, unless such claim is the result of the acts or omissions of the REPRESENTATIVE, and will pay all costs and damages (including reasonable attorney's fees) associated with any such claims or assessed against REPRESENTATIVE on account of such claims. REPRESENTATIVE agrees to immediately notify COMPANY at the time of any such claims and COMPANY reserves the right to personally defend or handle the defense of those claims relevant to it hereunder. Notwithstanding the foregoing, each party agrees to indemnify, defend and hold the other party harmless against any liability for any claims or demands arising out of the conduct of business by the party that are the result of the party's negligent or willful act or failure to act, including, but not limited to, any claims or demands arising out of any allegedly unauthorized use of a trademark, service mark, patent, copyright, process, idea, method or device by the party covered by this Agreement. Each party agrees to immediately notify the other of any claims or demands arising hereunder.

X. AMENDMENTS.

COMPANY may amend this Agreement at any time, upon thirty (30) days notice to REPRESENTATIVE. Such Amendments are specifically intended to include, but not limited to, revisions to the operations standards and Commission Schedules. Such Amendments shall be in writing effective thirty-one (31) days from the date of such notice or earlier if agreed upon by the parties. For any REPRESENTATIVE electing option

A or B in Section XIII. COMPANY shall not reduce any non-recurring or recurring commission rates by more than 20% in any one year period for any particular product or service. REPRESENTATIVE may terminate this Agreement within thirty (30) days of the date of such notice of amendment if REPRESENTATIVE does not desire to continue in the relationship as amended.

XI. MISCELLANEOUS

A. ASSIGNABILITY.

Neither this Agreement, nor any right or obligation hereunder is assignable, in whole or in part, whether by operation of law or otherwise, by REPRESENTATIVE without the prior written consent of the COMPANY. This Agreement may be assigned by COMPANY to any affiliate as defined in Section XIB. of this Agreement, or to any other person, firm or corporation which acquires substantially all of the business of COMPANY relating to Service, whether by purchase, consolidation, merger, or otherwise, upon 30 days' notice to REPRESENTATIVE. If REPRESENTATIVE does not desire to continue in the relationship after such assignment, then REPRESENTATIVE may terminate this Agreement.

B. AFFILIATES.

For the purpose of this Agreement, an "affiliate" of an entity shall mean any corporation or other business entity which owns or controls, is under common ownership or control with, or is owned or controlled by the first entity; and "control" shall mean the ownership of more than fifty percent of the voting stock or more than a fifty percent interest in the profits of any corporation or other business entity.

C. NOTICES AND OTHER COMMUNICATIONS.

Every notice, consent, approval, or other communications required or contemplated by this Agreement by REPRESENTATIVE shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

ASR Contract Administrator
Suite 200
1800 Century Blvd.
Atlanta, Georgia 30345

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Every notice, consent, approval, or other communication required or contemplated by this Agreement by COMPANY shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Where specifically required, notices shall be by certified or registered mail.

Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day thereafter, after it was deposited in the mails. Notice not given in writing shall be effective only if acknowledged a duly authorized officer or designated representative of the party to whom it was given.

D. NO WAIVER OF RIGHTS.

Failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of this obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement.

E. PAYMENTS.

5. If for any reason whatsoever this Agreement is terminated and any amount is due from REPRESENTATIVE to COMPANY, such amount shall be paid to COMPANY in cash, Company check or certified check by REPRESENTATIVE within thirty (30) days after receipt of COMPANY'S final accounting relating to REPRESENTATIVE. .
2. Each party shall have the right to set off against any payment due from it hereunder any amounts owed to it by the other party under this Agreement.
3. Any residual payments being made at the time of termination of this Agreement shall immediately cease to be paid by COMPANY to REPRESENTATIVE and REPRESENTATIVE acknowledges that it will no longer be entitled to residual payments upon termination of the agreement. Residual payments shall also cease in the event a Subscriber discontinues the service to which residual payments would otherwise apply or REPRESENTATIVE ceases to hold exclusive sales representative status under either option A or B of Section XIII.

F. GOVERNING LAW AND REGULATORY CHANGES.

1. The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of Georgia and of the United States. COMPANY reserves the right to amend or terminate this Agreement to conform it to any requirement of such laws or regulations, provided that REPRESENTATIVE shall have the right within thirty (30) days of receipt of notice of such amendment to terminate this Agreement. This Agreement may be immediately terminated by COMPANY if COMPANY becomes subject to any regulatory order from the Federal Communications Commission eliminating or substantially modifying the proposed Service marketing plans previously or hereafter submitted by COMPANY.

2. The validity, construction, and enforceability of any Service contract(s) executed pursuant to this Agreement shall be governed in all respects by COMPANY's state tariffs and the laws and regulations of the state in which such contracts are entered.

G. DISCONTINUANCE OF PROGRAM.

COMPANY reserves the right upon one hundred eighty (180) days' notice to REPRESENTATIVE to discontinue its Authorized Sales Representative Program as to all its sales representatives on a prospective basis. In such event this Agreement will continue in effect only with respect to REPRESENTATIVE's Service customers being provided Service pursuant to a long-term contract on the date of such notice, and as to each such customer REPRESENTATIVE's right to receive commissions and obligation to provide service shall cease upon the expiration of such customer's contract for Service in effect on the date of notice.

H. INDEMNIFICATION.

1. Each party agrees to indemnify and hold harmless the other party and its shareholders, directors, officers, and employees (collectively the "Indemnities") and each of them from and against any loss, costs, damages, claims, expenses (including attorneys' fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death or disease of any person, damage to or destruction or loss of any property or any other damages arising out of, resulting from, or in connection with (i) the performance or nonperformance of the Services contemplated by this Agreement which is caused in whole or in substantial part by an act, omission, default, or negligence (whether active or passive) of the party or its employees, or regardless of whether the party's liability would otherwise be limited to payments under state worker's compensation or similar laws, or (ii) the failure of the party to comply with any of the terms and conditions herein or the failure to conform to statutes, ordinances, or other regulations or requirements or any governmental authority in connection with the performance of the Services provided for in this Agreement, including actions brought by the party's employees under worker's compensation or similar laws.
2. Each party further agrees to indemnify and hold harmless the Indemnities from the other against (i) any and all penalties imposed on account of the violation of any law, ordinance, order, rule, regulation, condition, or requirement, in any way related, directly or indirectly to each party's performance hereunder, compliance with which is left by this Agreement to each party and (ii) any and all claims, liens and/or suits for labor and materials furnished at the party's request.
3. Each party shall, at its own cost, expense, and risk, defend any claim, suit, action or other legal proceeding (collectively "action") for which that party is hereunder obligated to indemnify an Indemnity. Subject to the provisions of subparagraph 3. above, the responsible party shall pay and

satisfy any judgment or decree which may be rendered against any of the Indemnities in any such action and shall pay reasonable costs and reasonable attorneys' fees which may be incurred by the Indemnities in connection therewith and/or in enforcing the indemnification provisions set forth above. Should the responsible party in the opinion of the other party, ignore or fail to properly handle or defend any such action, the other party may, at its option, assume and undertake, or join the handling or defense of any such action, and in that event the responsible party will reimburse the other for reasonable attorneys' fees and other reasonable expenses incurred by it in handling or defending same, including any reasonable amounts paid in settlement thereof or satisfaction of any judgment rendered.

I. LIMITATION OF LIABILITY.

Notwithstanding anything contained herein, COMPANY's liability and indemnity obligations are limited by provisions of COMPANY's state tariffs.

J. LIABILITY INSURANCE.

COMPANY represents that it has insurance equal to or exceeding that required of REPRESENTATIVE hereafter.

1. REPRESENTATIVE shall take out, pay for, and at all times during the performance of work hereunder maintain, such public liability, contingent (protective), worker's compensation and other such liability insurance as will satisfy the foregoing indemnity requirements of this Agreement and protect REPRESENTATIVE and COMPANY from claims arising out of REPRESENTATIVE's performance under this Agreement. Such insurance shall include comprehensive general liability, bodily injury and property damage, including automobile and broad form contractual liability covering liability assumed by the REPRESENTATIVE under this Agreement.
2. Such insurance shall: (i) include COMPANY as an additional insured; (ii) be primary insurance written on an occurrence basis to the full limits of liability hereinafter stated, and should COMPANY have other valid insurance, COMPANY's insurance shall be excess insurance only; and (iii) contain an endorsement stating that cancellation or expiration of the policy to which this endorsement is attached shall not become effective until after thirty (30) days advance written notice has been delivered to COMPANY.
3. Without limiting the requirements set forth in this paragraph J., REPRESENTATIVE shall maintain insurance with coverage and minimal limits of liability as follows:
 - a. Worker's compensation and employers' liability providing statutory coverage under the worker's compensation and occupational disease laws of the state where obligations are being performed under this Agreement and employers' liability coverage with limits of \$500,000.
 - b. Comprehensive general liability affording bodily injury

liability (or death) with limits of not less than \$500,000 for each occurrence and \$1,000,000 in the aggregate, such coverage to include \$1,000,000 broad form contractual liability covering liability assumed under this Agreement.

4. In no event shall the provisions of this paragraph J. be construed in any way to limit REPRESENTATIVE's obligations under the preceding paragraph H.
5. The insurance coverage required herein shall be through policies issued by companies authorized to do business under the laws of the state where the work is performed. The insurance carrier must be rated by the latest edition of Best's Insurance Guide, published by Alfred M. Best Company, Inc. at no less than a "B+" Best Policyholders Rating and no less than an "X" rating in Best's Financial Size Category.
6. All of such insurance, including renewals, shall be subject to the approval of COMPANY for adequacy of protection, and evidence of such coverages shall be furnished to COMPANY indicating such insurance to be in force and effect. Completed Certificates of Insurance shall be filed with COMPANY prior to commencement of work hereunder.
7. The foregoing insurance requirements may be waived by COMPANY if REPRESENTATIVE (i) has qualified and is certified as self-insured under the laws of the state(s) in which REPRESENTATIVE is authorized to perform under this Agreement and (ii) has a net worth of at least five million (\$5,000,000.00) dollars or provides a guarantee of liability suitable to COMPANY issued and executed by a company that has a net worth of at least ten million (\$10,000,000.00) dollars. In the event of such waiver by COMPANY, REPRESENTATIVE agrees to provide to COMPANY evidence, satisfactory to COMPANY, of compliance with terms set forth in (i) and (ii) above.

K. NONDISCRIMINATION COMPLIANCE/GRATUITIES AND LOBBYING. All the applicable provisions of Appendix E, "NONDISCRIMINATION COMPLIANCE AGREEMENT", are hereby incorporated herein. In addition, Appendix F, "GRATUITIES AND LOBBYING", is hereby incorporated herein.

L. SEVERABILITY. In the event any portion of this Agreement may be determined by any governmental body having jurisdiction hereover, or by any court of competent jurisdiction, to be unenforceable, the balance of the Agreement shall be severed therefrom and shall remain in full force and effect unless a failure of consideration would thereby result.

M. CAPTIONS. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

N. PROHIBITED RELATIONSHIPS. REPRESENTATIVE warrants that no person or agency has been employed, retained, or directed to solicit or secure this Agreement

upon an agreement or understanding for a commission percentage, brokerage, contingent fee, or other remuneration. The exchange or offering of any gift item, personal service entertainment or unusual hospitality ("gratuities") by either party of this Agreement to the other is expressly prohibited. This prohibition is equally applicable to each party's officers, employees and immediate family members. COMPANY may, by written notice to REPRESENTATIVE, terminate the right of REPRESENTATIVE to proceed under this Agreement if it is found by COMPANY that gratuities are or have been offered or given by REPRESENTATIVE, its employees or immediate family members, to any employee of COMPANY.

O. LICENSES.

No licenses, express or implied, under any patents are granted by COMPANY to REPRESENTATIVE hereunder nor by REPRESENTATIVE to COMPANY.

P. SPECIAL CONDITIONS.

This contract shall become null and void and terminate upon the filing of bankruptcy, adjudication of bankruptcy or petition for reorganization filed by either party.

Q. SURVIVAL OF OBLIGATIONS.

Any respective obligations of the parties hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration. This includes, but is not limited to, obligations set forth in Sections VII, IX and XI.H.

R. INCORPORATION OF APPENDICES.

Appendices A through F, referred to in this Agreement and attached hereto, are integral parts of this Agreement and all terms and conditions contained therein are fully incorporated herein by reference and REPRESENTATIVE agrees to be bound thereby.

S. AGREEMENT BINDING ON SUCCESSORS IN INTEREST.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective and applicable heirs, legal and personal representatives, successors and permitted assigns, if any.

T. LIMITATION OF ACTIONS.

No action, regardless of its form, arising out of this Agreement, may be brought by either party more than two (2) years after the cause of action has arisen.

XII. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

XIII. ELECTION

REPRESENTATIVE acknowledges that it has read and understands the provisions of Section III and hereby makes an election as required in Subsection III.A.4 by indicating below, its choice and initialing beside the option chosen:

Choice:

Initials:

- ☐ A. REPRESENTATIVE elects to market or otherwise promote exclusively the intraLATA network services of COMPANY. _____
- ☐ B. REPRESENTATIVE elects to market or otherwise promote exclusively all COMPANY network services with the exception of intraLATA toll services. _____
- ☐ C. REPRESENTATIVE elects not to market or otherwise promote exclusively the intraLATA network services of COMPANY. _____

Accepted and Approved: As of _____, 19____.

(ABOVE TO BE COMPLETED BY COMPANY REPRESENTATIVE)

BELLSOUTH TELECOMMUNICATIONS, INC.

(REPRESENTATIVE)

BY: _____
(Signature)

BY: _____
(Signature)

NAME: JOHN W. THACKER
(Printed Name)

NAME: _____
(Printed Name)

TITLE: DIRECTOR

TITLE: _____

DATE: _____

DATE: _____

APPENDIX A
Authorized Marketing Areas

I. Terms and Conditions

- A. REPRESENTATIVE shall conduct the marketing activities in this Agreement in the specific geographic areas as indicated below.
- B. If REPRESENTATIVE is appointed as a representative to market Service in an Authorized Marketing Area which boundaries cross into states not primarily served by COMPANY, REPRESENTATIVE shall contact its COMPANY representative to determine whether a prospective customer in the portion of the Authorized Marketing Area that extends beyond such boundary is within REPRESENTATIVE's Authorized Marketing Area. All requests to COMPANY shall be in the format set forth in the attached Appendix A.1.
- C. Areas in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee that are provided exchange services by companies other than COMPANY are not included in REPRESENTATIVE's Authorized Marketing Area and REPRESENTATIVE is not authorized to sell, or to attempt to sell, any Service in those areas.

II. Authorized Marketing Area

Subject to Paragraph I.B. and I.C. above, the Authorized Marketing Area(s) set forth below (is/are) designated as the authorized sales areas for REPRESENTATIVE during the term of this Agreement.

ALABAMA-		KENTUCKY-		NORTH CAROLINA-	
BIRMINGHAM	_____	LOUISVILLE	_____	ASHEVILLE	_____
HUNTSVILLE	_____	OWENSBORO	_____	CHARLOTTE	_____
MOBILE	_____	WINCHESTER	_____	GREENSBORO	_____
MONTGOMERY	_____			RALEIGH	_____
				WILMINGTON	_____
FLORIDA-		LOUISIANA-		SOUTH CAROLINA-	
DAYTONA BEACH	_____	BATON ROUGE	_____	CHARLESTON	_____
GAINESVILLE	_____	LAFAYETTE	_____	COLUMBIA	_____
JACKSONVILLE	_____	NEW ORLEANS	_____	FLORENCE	_____
ORLANDO	_____	SHREVEPORT	_____	GREENVILLE	_____
PANAMA CITY	_____				
PENSACOLA	_____				
SOUTHEAST	_____				
GEORGIA-		MISSISSIPPI-		TENNESSEE-	
ALBANY	_____	BILOXI	_____	CHATTANOOGA	_____
ATLANTA	_____	JACKSON	_____	KNOXVILLE	_____
AUGUSTA	_____			MEMPHIS	_____
MACON	_____			NASHVILLE	_____
SAVANNAH	_____				
OTHER	_____				

- All areas marked are LATA-wide unless otherwise indicated in "Other" section.

APPENDIX A.1

Request to Market in Unauthorized Area

<u>DATE</u>	<u>Request Made By</u>	<u>Area</u>	<u>Customer</u>
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Note: If granted, permission to market in the above area is granted for one time only. REPRESENTATIVE must separately apply to market as a BellSouth representative in the above area if additional opportunities arise to market in said area.

APPROVED: _____

DENIED: _____

EFFECTIVE: _____ **TERM OF EXPIRATION:** _____

ASR SALES CENTER MANAGER

CONTRACT ADMINISTRATOR

DATE: _____

DATE: _____

APPENDIX B

I. Sales Commissions

- A. Sales commissions for each Service sold by REPRESENTATIVE under this Agreement are only due and payable where the specific terms and conditions, applicable to the Service, set forth in this Agreement have been met.
- B. Sales commissions may be altered or withheld pursuant to Section I.A.3. and IV.C.2., at the COMPANY's sole discretion, for sales of services subject to special terms, conditions or prices.
- C. If ASR has elected option A or B in Section XIII, then both non-recurring and residual compensation, as set forth in the appropriate portion of the Commission Schedule, shall be paid to REPRESENTATIVE.
- D. If ASR has elected option C in Section XIII, then only the non-recurring compensation set forth in the Commission Schedule shall be paid to REPRESENTATIVE.

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

SERVICE (G.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON-RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
BUSINESS LINES (New) (A.3)				
Flat Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Back-Up Line	\$ 20.00	\$ 40.00	\$ 1.00	\$ 1.00
Message Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
NAR- Network Access Register	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate FX (+A.9)	\$ 267.00	\$ 267.00	\$ 4.00	\$ 4.00
Trunk	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
UBExp Local Calling Plan	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
* ISDN-Individual Business line (A.42)				
Mo to Mo	\$ 100.00	\$ 175.00	\$ 5.00	\$ 5.00
24-59 Months	\$ 100.00	\$ 200.00	\$ 5.00	\$ 5.00
60-120 Months	\$ 100.00	\$ 250.00	\$ 5.00	\$ 5.00
* ISDN-Primary Rate	\$ 1,800.00	\$ 1,250.00	\$ 90.00	\$ 90.00
* PATHLINK SM				
Voice/Data				
Mo to Mo	\$ 1,800.00	\$ 1,600.00	\$ 90.00	\$ 90.00
24-48 Months	\$ 1,800.00	\$ 2,000.00	\$ 90.00	\$ 90.00
49-72 Months	\$ 1,800.00	\$ 2,500.00	\$ 90.00	\$ 90.00
Data Only				
Mo to Mo	\$ 900.00	\$ 800.00	\$ 30.00	\$ 30.00
24-48 Months	\$ 900.00	\$ 1,000.00	\$ 30.00	\$ 30.00
60-120 Months	\$ 900.00	\$ 1,250.00	\$ 30.00	\$ 30.00
Hunting-Rotary (A.13-NC ONLY)	\$ 17.00	\$ 68.00		
DATA - New Line (B.7)				
* SynchroNet®				
Subrate Drop/19.2 (per drop)				
Mo to Mo	\$ 73.20	\$ 119.80	\$ 3.66	\$ 3.66

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

SERVICE	(G.S.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON- RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
56K Drop (per drop)					
Mo to Mo		\$ 123.40	\$ 293.60	\$ 6.17	\$ 6.17
Contracted		\$ 123.40	\$ 645.92	\$ 6.17	\$ 6.17
* Megalink® InterOfc Channel (B.7)					
Mo to Mo		\$ 286.00	\$ 514.25	\$ 14.30	\$ 14.30
Contracted		\$ 286.00	\$ 1,114.07	\$ 14.30	\$ 14.30
* MegaLink® Local Channel/DS1					
Mo to Mo		\$ 132.50	\$ 75.25	\$ 6.63	\$ 6.63
Contracted		\$ 132.50	\$ 218.03	\$ 6.63	\$ 6.63
* MegaLink® Channel Svc (Per 24 Channels)					
Mo to Mo		\$ 190.37	\$ 187.16	\$ 9.52	\$ 9.52
Contracted		\$ 190.37	\$ 608.27	\$ 9.52	\$ 9.52
ESSX SERVICE (A.12)					
ESSX NAR - see BUSINESS LINES					
ESSX Main Station		\$ 14.04	\$ 31.50		
ESSX Station netting					
Addition		\$ 14.04	\$ 31.50		
Deletion (Maintenance Fee)		\$ 14.04	\$ 15.75		
Station Features - per station (A.12)					
3-Way Calling		\$ 1.00	\$ 2.00		
Repeat Dialing		\$ 1.50	\$ 3.50		
Call Return		\$ 2.00	\$ 4.00		
Call Tracing		\$ 5.00	\$ 8.25		
Caller ID		\$ 3.88	\$ 7.76		
3-Feature Pkg		\$ 1.30	\$ 2.60		
4-Feature Pkg		\$ 1.37	\$ 2.74		
5-Feature Pkg		\$ 1.44	\$ 2.88		
6-Feature Pkg		\$ 1.51	\$ 3.02		
7-Feature Pkg		\$ 1.75	\$ 3.50		

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

SERVICE	(G.S.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON- RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
8-Feature Pkg		\$ 2.01	\$ 4.02		
9-Feature Pkg		\$ 2.31	\$ 4.62		
10-Feature Pkg		\$ 2.66	\$ 5.90		
ECAS/DCAS Line		\$.10	\$ 4.50		
System Features - per system	(A.12)				
Call Fwd Var		\$ 1.00	\$ 3.90		
Call Fwd BL		\$ 4.50	\$ 17.40		
Call Fwd DA		\$ 2.50	\$ 7.90		
Permanent and Call Hold		\$ 2.00	\$ 7.90		
Uniform Call Dist-Per hunt Group		\$ 8.00	\$ 18.00		
Uniform Call Dist-Per Announcement		\$ 33.00	\$ 67.00		
Call Park		\$.50	\$ 2.20		
Call Pickup		\$.50	\$ 2.20		
Call Waiting Originating		\$ 3.50	\$ 7.00		
Call Waiting Terminating		\$ 1.20	\$ 4.60		
ECAS/DCAS		\$ 6.25	\$ 18.00		
ARS		\$ 11.00	\$ 40.70		
ARS Pattern		\$.60	\$ 1.20		
ARS Trunk		\$ 2.00	\$ 4.00		
Speed Calling		\$ 3.50	\$ 7.00		
System Terminations - each	(A.12)				
Interexchange Carrier Access line/SFG		\$ 2.50	\$ 8.70		
Dedicated Facility group		\$ 2.50	\$ 8.70		
Analog Termination		\$ 14.75	\$ 29.50		
Digital Termination		\$ 5.00	\$ 10.00		
Analog tie line		\$ 26.00	\$ 52.00		
Digital tie line		\$ 16.00	\$ 32.00		
Analog FX		\$ 26.00	\$ 52.00		
Digital FX		\$ 16.00	\$ 32.00		
Analog FCO		\$ 26.00	\$ 52.00		

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

SERVICE (G.S.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON-RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
Digital FCO	\$ 16.00	\$ 32.00		
DS1 Termination = MegaLink	\$ 350.00	\$ 350.00		
Direct Inward Dialing (A.12)	\$ 29.00	\$ 87.00		
* MULTISERV SERVICE (A.12)				
Links (Mo to Mo)	\$ 50.00	\$ 170.00	\$ 2.50	\$ 2.50
Contracted	\$ 50.00	\$ 204.00	\$ 2.50	\$ 2.50
* MULTISERV PLUS (A.12)				
Links (Mo to Mo)	\$ 23.00	\$ 46.00	\$ 1.15	\$ 1.15
Contracted	\$ 23.00	\$ 57.00	\$ 1.15	\$ 1.15
AdWatch (Pilot) (A.34)	\$ 32.00	\$ 48.00		
E911 Pinpoint SM (A.13/A.24)	\$ 155.00	\$ 200.00		
CrisisLink SM (A.34.5)				
1st Plan(Mo to Mo)	\$ 85.00	\$ 200.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 240.00	\$ 4.25	\$ 4.25
Add Plan (Mo to Mo)	\$ 85.00	\$ 30.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 50.00	\$ 4.25	\$ 4.25
Additional Numbers	\$ 7.00	\$ 3.00		
ZipConnect (Pilot) (A.34)				
Mo to Mo- 1,000 Calls/month	\$ 250.00	\$ 200.00	\$ 12.50	\$ 12.50
36 Month Contract- 2,500 Calls/month	\$ 250.00	\$ 400.00	\$ 12.50	\$ 12.50
36 Month Contract-5,000 Calls/month	\$ 250.00	\$ 600.00	\$ 12.50	\$ 12.50
36 Month Contract-25,000 Calls/month	\$ 250.00	\$ 1,500.00	\$ 12.50	\$ 12.50
36 Month Contract-150,00+ Calls/month	\$ 250.00	\$ 5,000.00	\$ 12.50	\$ 12.50

APPENDIX B

I. Sales Commissions Schedule

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SERVICE (G.S.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON-RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
FEATURES (A.13)				
Custom Calling Features				
Call Forwarding	\$ 3.76	\$ 15.04		
CF BL & DA	\$ 3.28	\$ 9.84		
CF BL/DA/VAR Multi Simul	\$ 3.00	\$ 6.00		
Call Waiting	\$ 4.50	\$ 13.50		
Remote Access to CF	\$ 7.65	\$ 22.95		
Speed Calling	\$ 5.06	\$ 10.12		
Three -Way Calling	\$ 4.08	\$ 12.24		
Remote Call Forwarding	\$ 21.00	\$ 42.00		
Packages-Two Features	\$ 6.39	\$ 25.56		
Packages-Three Features	\$ 8.79	\$ 35.16		
Packages-Four Features	\$ 11.15	\$ 44.60		
Customized Code Restriction	\$ 3.89	\$ 11.67		
TOUCHSTAR (A.13)				
Call ID	\$ 10.00	\$ 30.00		
Other Feature (each)	\$ 5.00	\$ 15.00		
RingMaster I (A.13)	\$ 7.00	\$ 14.00		
RingMaster II	\$ 10.00	\$ 20.00		
Prestige Features -User Transfer (A.12)	\$ 5.00	\$ 15.00		
WATSAVER (East A.18 West A.20)				
4- 5 Hours	\$ 42.00	\$ 37.80	\$ 2.10	
10 Hours	\$ 90.00	\$ 81.00	\$ 4.50	
15 Hours	\$ 117.00	\$ 105.30	\$ 5.85	
18 Hours	\$ 162.00	\$ 145.80	\$ 8.10	
20 Hours	\$ 114.00	\$ 102.60	\$ 5.70	
25 Hours	\$ 195.00	\$ 175.50	\$ 9.75	
38 Hours	\$ 319.20	\$ 287.28	\$ 15.96	
50 Hours	\$ 367.00	\$ 330.00	\$ 18.35	

I. Sales Commissions Schedule
*** Must be Certified to Receive Commissions**

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APPENDIX B

I. Sales Commissions Schedule

*** Must be Certified to Receive Commissions**

SERVICE	(G.S.S.T. REFERENCE)	AVERAGE MONTHLY BILLED REVENUE	NON- RECURRING COMMISSION DOLLARS	MONTHLY RESIDUALS LOCAL & TOLL EXCLUSIVITY COLUMN A	MONTHLY RESIDUALS LOCAL EXCLUSIVITY COLUMN B
* FR/CDS					
DSO Port					
Mo to Mo		\$ 200.00	\$ 200.00	\$ 7.50	\$ 7.50
12-36 Month Contract		\$ 200.00	\$ 300.00	\$ 7.50	\$ 7.50
37-70 Month Contract		\$ 200.00	\$ 375.00	\$ 7.50	\$ 7.50
DS1 Port					
Mo to Mo		\$ 500.00	\$ 350.00	\$ 10.00	\$ 10.00
12-36 Month Contract		\$ 500.00	\$ 550.00	\$ 10.00	\$ 10.00
37-70 Month Contract		\$ 500.00	\$ 650.00	\$ 10.00	\$ 10.00
* DDAS					
Mo to Mo		\$ 170.00	\$ 160.00	\$ 6.17	\$ 6.17
24 Month Contract		\$ 170.00	\$ 320.00	\$ 6.17	\$ 6.17
25-42 Month Contract		\$ 170.00	\$ 480.00	\$ 6.17	\$ 6.17
42 and over Contract		\$ 170.00	\$ 640.00	\$ 6.17	\$ 6.17
Inter-Office Channel		\$ 200.00	\$ 160.00	\$ 6.17	\$ 6.17
* FlexServ					
DSO Port-Digital Port					
Mo to Mo		\$ 4.60	\$ 30.00	\$ 1.00	\$ 1.00
48+ Month Contract		\$ 4.60	\$ 60.00	\$ 1.00	\$ 1.00
DS1 Port-Conn with DSO Switching					
Mo to Mo		\$ 75.00	\$ 210.00	\$ 10.00	\$ 10.00
48+ Month Contract		\$ 75.00	\$ 415.00	\$ 10.00	\$ 10.00
DS1 Port-Conn with DS1 Switching					
Mo to Mo		\$ 45.00	\$ 165.00	\$ 7.50	\$ 7.50
48+ Month Contract		\$ 45.00	\$ 330.00	\$ 7.50	\$ 7.50

APPENDIX C

Sales Terms and Conditions

- I. Eligible Sales
Unless otherwise set forth in this Agreement, the following terms and conditions shall apply to each sale of Service made by REPRESENTATIVE under this Agreement.
- II. General Service Offering Terms and Conditions
 - A. REPRESENTATIVE acknowledges all applicable provisions of COMPANY's tariffs as they pertain to the prohibition of, or conditions on, resale of service. REPRESENTATIVE agrees that it will not sell any Service, nor will REPRESENTATIVE be entitled to any compensation for sales of service to any person, corporation or entity which is not the end-user of the service.
 - B. Unless otherwise set forth in this Agreement, COMPANY shall have the option to disallow commissions on any new sales of Service which remain installed for less than six (6) months. Should the customer have its Service disconnected in six (6) months or less, COMPANY may recover all commissions paid to REPRESENTATIVE for that sale. REPRESENTATIVE shall never sell Service to any customer with the intent of avoiding the application of this provision in order to earn commission payments. In the event service is removed immediately after the six month grace period under circumstances indicating fraud, bad faith or other suspicious circumstances, COMPANY may seek to recover all commissions previously paid to REPRESENTATIVE for such sale. In such cases, COMPANY may investigate the circumstances surrounding the discontinuance of service, and REPRESENTATIVE will fully cooperate in such investigation. If, after the conclusion of the investigation, it is determined by COMPANY that commissions have been improperly received by REPRESENTATIVE, all such commissions previously received shall be voluntarily returned to COMPANY by REPRESENTATIVE.

APPENDIX D

General Support Levels

REPRESENTATIVE electing Option A or B in Section XIII of this Agreement will be entitled to the General Support Levels*, subject to being made available by COMPANY, as follows:

- Enhanced on-line tools
 - Order entry
 - Pricing
 - Tariffs
 - Applications
 - References material
 - E-Mail
- Training for services/applications/sales
- Enhanced Co-op program
- Leads/referrals
- Information and training on competing network products
- Marketing/revenue generation bonus programs.

REPRESENTATIVE electing Option C in Section XIII of this Agreement will be entitled to the General Support Levels* as follows:

- On line pricing and order entry
- Sales Literature & selected promotion support
- Service training only
- Limited Co-op advertising

*Note: As indicated in Section III of this Agreement, the support levels provided by COMPANY are provided as deemed appropriate by COMPANY. COMPANY reserves the right to alter the support level if and when it deems such changes necessary or appropriate. REPRESENTATIVE may opt out of this Agreement within 30 days or notice of changes to any of the support levels deemed by REPRESENTATIVE to be unacceptable.

APPENDIX E

NONDISCRIMINATION COMPLIANCE AGREEMENT

Contractors shall comply with the applicable provisions of the following:

Exec. Order No. 12138, P.L. 95-507, Exec. Order No. 11246, Exec. Order No. 11625, Section 8 of the Small Business Act as amended, Railroad Revitalization and Regulatory Reform Act of 1976, Exec. Order No. 11701, Exec. Order No. 11758, Exec. Order No. 12138, Section 503 of the Rehabilitation Act of 1973 as amended by PL93-516, Vietnam Era Veteran's Readjustment Assistance Act of 1974 and the rules, regulations and relevant Orders of the Secretary of Labor pertaining to the Executive Orders and Statutes listed above.

For contracts of or which aggregate to \$2,500 or more annually, the following table describes the clauses which are included in the contract:

1. Inclusion of the Equal Employment clause in all contracts and orders;
2. Certification of non-segregated facilities;
3. Certification that an affirmative action program has been developed and is being filed;
4. Certification that an annual Employers Information Report (EEO-1 Standard Form 100) is being filed;
5. Inclusion of the "Utilization of Minority and Women's Business Enterprises" clause in all contracts and orders;
6. Inclusion of the "Minority and Women's Business Enterprise Subcontracting Program" clause in all contracts and orders;
7. Inclusion of the "Listing of Employment Openings" clause in all contracts and orders;
8. Inclusion of the "Employment of the Handicapped" clause in all contracts and orders;

Contract Value	Clause(s) Required
\$2,500 to \$10,000	8
\$10,000 to \$50,000	1, 2, 5, 6, 7, 8
\$50,000 or more	1, 2, 3*, 4*, 5, 6, 7, 8

* Applies only for businesses with 50 or more employees

1. Equal Employment Opportunity Provisions

In accordance with Exec. Order No. 11246, dated September 24, 1965 and Part 60-1 of Title 41 of the codes of Federal Regulations (Public Contracts and Property Management, Office of Federal Contract Compliance, Obligations of Contractors and Subcontractors), as may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

2. Certification of Non-segregated Facilities

The contractor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained and that it will obtain a similar certification prior to the award of any nonexempt subcontract.

3. Certification of Affirmative Action Program

The contractor affirms that it has developed and is maintaining an affirmative action plan as required by Part 60-2 of Title 41 of the Code of Federal Regulations.

4. Certification of Filing of Employers Information Reports

The contractor agrees to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) or such forms as may be promulgated in its place.

5. Utilization of Minority and Women's Business Enterprises

(a) It is the policy of the Government and BellSouth Corporation and its affiliates as a Government contractor, that minority and women's business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts.

(b) The contractor agrees to use his or her best efforts to carry out this policy in the award of his or her subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority or women's business enterprise" means a business with at least 51 percent of which is owned by minority or women group members or in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority or women group members. For purposes of this definition, minority group members are Blacks, Hispanics, Asians, Pacific Islanders, American Indians and Alaskan Natives. Contractors may rely on written representation by subcontractors regarding their status as minority or women's business enterprises in lieu of an independent investigation.

6. Minority and Women's Business Enterprise Subcontracting Program

(a) The contractor agrees to establish and conduct a program which will enable minority and women's business enterprises (as defined in paragraph 5 above) to be considered fairly as subcontractors and suppliers under the contract. In this connection, the Contractor shall:

- (1) Designate a liaison officer who will administer the contractor's minority and women's business enterprises program;
- (2) Provide adequate and timely consideration of the potentialities of known minority and women's business enterprises in all "make-or-buy" decisions;
- (3) Assure that known minority and women's business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority and women's business enterprises;
- (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority and women's business enterprises, (ii) awards to minority and women's business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority and women's business enterprises;
- (5) Include the Utilization of Minority and Women's Business Enterprises clause in subcontracts which offer substantial minority and women's business enterprises subcontracting opportunities;
- (6) Cooperate with the Government's Contracting Officer for BellSouth Corporation or its affiliates in any studies and surveys of the contractor's minority and women's business enterprises procedures and practices that the Government's Contracting Officer may from time to time conduct;
- (7) Submit periodic reports of subcontracting to known minority and women's business enterprises with respect to the records referred to in sub-paragraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Government's Contracting Officer for BellSouth Corporation or its affiliates may prescribe.

(b) The contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 (or in the case of WBE \$1,000,000 in the case of contracts for the construction of any public facility and which offer substantial subcontracting possibilities) provisions which shall conform substantially to the language of this Agreement, including this paragraph (b) and to notify the Contracting Officer of the names of such subcontractors.

7. Listing of Employment Openings for Veterans

In accordance with Exec. Order 11701, dated January 24, 1973, and Part 60-25 of Title 41 of the Code of Federal Regulations, as it may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

8. Employment of the Handicapped

In accordance with Exec. Order 11758, dated January 15, 1974, and Part 60-74 of Title 41 of the Code of Federal Regulations, as may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

APPENDIX F

Gratuities and Lobbying

Our Company does business with the Federal Government and with various state and local governments. It is Company policy that, in doing business with governmental agencies, the COMPANY and all of its employees, agents, and other representatives will comply with all applicable laws, rules, and regulations regarding gratuities, lobbying, and similar matters. Such laws, rules, and regulations often contain severe civil and criminal penalties for their violation.

By executing this Agreement, you hereby represent and warrant that your company and all employees, agents, consultants, and other representatives are familiar with and will comply with all applicable laws, rules, and regulations concerning the provision of gratuities to and lobbying of any officer, employee, consultant, or other representative of a government agency. Where there is any question whether a matter is permitted or not under applicable laws, rules, and regulations, you agree that you will act as if it were not permitted. If you violate any laws, rules, or regulations in connection with your dealings with a government agency arising from your work under this Agreement, we may immediately terminate this Agreement. You agree to indemnify, defend and hold us harmless from any claims, damages, any liabilities that may arise from any such violation.

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

**COMPLAINT OF AMERICAN
COMMUNICATION SERVICES OF
COLUMBUS, INC. AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.
REGARDING ACCESS TO UNBUNDLED
LOOPS.**

DOCKET NO. 7212-U

**COMPLAINT OF AMERICAN COMMUNICATION
SERVICES OF COLUMBUS, INC.**

American Communication Services of Columbus, Inc. ("ACSI") hereby files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") and as grounds therefor states as follows:

I. PRELIMINARY

1.

Federal and State laws intended to promote competition in the telecommunications industry require incumbent local exchange companies, such as BellSouth, to provide nondiscriminatory access to unbundled loops. ACSI is one of the earliest providers of competitive switched service in Georgia and is the first competitor to request a significant number of unbundled loops from BellSouth. ACSI has experienced delays in receiving unbundled loops from BellSouth and unreasonable service interruptions in switching customers to those loops. This failure to provide unbundled loops jeopardizes the ability of competitive service providers to attract and retain customers and, therefore, threatens the development of competitive markets in Georgia. Immediate action is required by the Commission in order to avoid irreparable harm to Georgia's emerging competitive markets.

II. STATEMENT OF FACTS

2.

ACSI is a competitive local exchange carrier certificated to provide switched and dedicated local exchange service in Georgia. ACSI's parent company, American Communications Services, Inc. operates 20 fiber optic networks throughout the South and Southwestern United States and has 30 such networks under construction.

3.

On December 12, 1995, the Commission granted Certificate of Authority No. 960 to ACSI for the provision of interLATA intrastate telecommunications in Georgia. More specifically, the Commission granted ACSI authority to provide special access and dedicated private line service in the Columbus, Georgia area. In addition, on June 21, 1996, the Commission granted to ACSI Interim Certificate of Authority No. L-015 to provide switched local exchange services.

4.

BellSouth is a Regional Bell Operating Company that provides switched local exchange and other telecommunications services in Georgia and eight other Southern states. BellSouth is the incumbent provider of switched local exchange service in Columbus, Georgia.

5.

ACSI operates a fiber optic network in Columbus, Georgia and it is the first city to be offered competitive switched local exchange service by ACSI.

6.

On July 25, 1996, ACSI and BellSouth entered into an Interconnection Agreement ("Interconnection Agreement"). On August 13, 1996, ACSI filed a Petition for Arbitration with

this Commission, Docket No. 6854-U, requesting the Commission to resolve certain unbundling pricing issues. On October 17, 1996, ACSI and BellSouth signed an Amendment ("Amendment") to the Interconnection Agreement addressing all outstanding issues and, in particular, the pricing of unbundled loops, as a settlement of ACSI's Petition for Arbitration. The Interconnection Agreement between ACSI and BellSouth, including the Amendment, was approved by the Order of the Georgia Public Service Commission ("Commission") in Docket No. 6881-U signed by the Chairman and Executive Secretary on November 8, 1996.

7.

The Interconnection Agreement provides specific detail as to the provisioning of unbundled loops (Section IV), including Order Processing (Section IV.C), Conversion of Exchange Service to Network Elements (Section IV.D), and Service Quality (Section IV.E). The relevant provisions of the Interconnection Agreement are attached hereto as Exhibit A. Section IV.C.2 of the Interconnection Agreement provides that "Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services."

8.

The Interconnection Agreement also explicitly requires certain processes for the Conversion of Exchange Service to Network Elements (Section IV.D). This conversion process is designed to be a seamless process according to which a half-hour cutover window is agreed upon by the parties 48 hours in advance, ACSI and BellSouth coordinate the cutover, and the customer is not disconnected for more than 5 minutes. BellSouth also must coordinate implementation of Service Provider Number Portability (SPNP) as part of an unbundled loop installation. The following are among the key provisions of Section IV.D:

- D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.
- D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.
- D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.
- ...
- D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.
- D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.
- D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.

9.

On November 19 and 20, 1996, ACSI placed its first three orders for unbundled loops in Columbus, Georgia, requesting cutover of the customers to ACSI service on November 27, 1996. Each of the three orders included an order for Service Provider Number Portability ("SPNP"). Pursuant to the process established in the Interconnection Agreement, ACSI submitted its first orders for unbundled loops through completion and submission of the Service Order form specified in the Facilities Based Carrier Operating Guide ("FBOG"). These orders were

confirmed by BellSouth on November 25 and 26.

10.

In cutting over these three customers on November 27, 1996, BellSouth completely failed to comply with the cutover procedures established in Section IV.D of the Interconnection Agreement. All three customers involved a single Plain Old Telephone Service ("POTS") line, the simplest possible cutover. Two of these customers were initially disconnected entirely. Customers calling the number received an intercept message. Under the Interconnection Agreement, this disconnection should have been coordinated with the cutover to the ACSI unbundled loop and the disconnect should have lasted less than 5 minutes. The total cutover lasted 4-5 hours, or approximately 50 to 60 times longer than required under the Interconnection Agreement.

11.

Once the disconnection problem was resolved and the intercept message was removed for these two customers, incoming calls received no answer because the Service Provider Number Portability ("SPNP") provisions of the Interconnection Agreement were also not adhered to properly. When ACSI orders SPNP as part of a loop order, BellSouth is required to "coordinate implementation of SPNP with the loop installation." Section IV.D.8. This coordination did not take place, exacerbating the disconnect problems and adding further delay. In general, the cutover was not *coordinated* between ACSI and BellSouth as carefully delineated in the Interconnection Agreement because BellSouth unilaterally administered the cutover without contacting ACSI.

12.

As to the third customer, his service was completely disconnected for the entire day of Wednesday, November 27, 1996.

13.

As a result of this problem, ACSI informed BellSouth on Wednesday, December 4, 1996, just a week after its first unbundled loop order was filled, to immediately place all orders on hold until these serious order processing and cutover problems could be resolved. ACSI decided that it could not afford further damage to its customers' service availability, nor to ACSI's reputation, as a result of further service outages and attenuated cutovers. After ACSI's request to put further orders on hold, however, three BellSouth customers for whom ACSI had requested conversion to ACSI service were nonetheless disconnected by BellSouth, resulting in severe service impacts for these customers.

14.

Since December 4, 1996, ACSI has been unable to obtain unbundled loops from BellSouth because ACSI has received no assurance from BellSouth that customers provisioned over BellSouth unbundled loops will not experience severe service disruption. Despite additional testing by BellSouth, serious processing problems persist. In addition to causing damage to ACSI's reputation as a provider of high quality telecommunications services, BellSouth has directly caused ACSI to lose the revenues associated with its planned unbundled loop orders. As a result of BellSouth's failure to implement the procedures agreed upon in the Interconnection Agreement, BellSouth itself is retaining customers that have signed-up for ACSI service. As of the date of this Complaint, ACSI has orders for 113 unbundled loops in Columbus, Georgia. Each day of additional delay jeopardizes ACSI's ability to retain the customers it has presently

signed-up for service and its ability to attract additional customers. Moreover, by occupying ACSI personnel, BellSouth's failure to provision ACSI's unbundled loops has delayed the rollout of ACSI switched local exchange service in other markets.

15.

In the process of responding to ACSI's inquiries on unbundled loops, BellSouth has revealed severe shortcomings in its loop provisioning procedures. On December 4, on a conference call with ACSI, a BellSouth Executive Vice President, Ann Andrews, informed ACSI that BellSouth will not provide basic provisioning functions (such as order status, jeopardies against the due date, etc.) that are routinely provided to special access customers. Ms. Andrews stated that these functions would not be performed because they are not performed for BellSouth end users. These statements are in direct contravention of Section IV.C.2 of the Interconnection Agreement which ensures similar order processing to that currently used for special access services. BellSouth's entire approach to unbundling indicates that the company has failed to commit the resources to establish the unbundled loop processes agreed to on July 25, 1996 with ACSI. Furthermore, it indicates that the personnel implementing the Interconnection Agreement at the time either did not understand or did not intend to comply with that agreement.

16.

Up until December 12, 1996, BellSouth also refused, despite repeated requests, to provide provisioning intervals for: a) the time between the placement of an order by ACSI and firm order confirmation by BellSouth and b) the time between the placement of an order by ACSI and cutover of the customer to ACSI. On December 12, 1996, BellSouth committed to: a) 48 hours between the placement of an order and firm order confirmation and b) 5 days from the placement of an order by ACSI to cutover. Of course, these timeframes have not been put into

practice in ongoing tests, and ACSI still cannot begin cutting over customers until tests have ensured that ACSI customers will not be disconnected.

17.

ACSI has worked diligently to advise BellSouth of the difficulties it encountered in obtaining unbundled loops. On December 11, 1996, Riley Murphy, General Counsel for ACSI, sent a letter to Richard Teel, Vice President, Regulatory for BellSouth, describing the situation. A copy of Ms. Murphy's letter is attached hereto marked Exhibit B. On December 17, 1996, Mr. Teel responded to Ms. Murphy's letter, assuring her that BellSouth was working to resolve operational issues. A copy of Mr. Teel's letter is attached hereto marked Exhibit C. However, as demonstrated in the letter dated December 18, 1996 from James Falvey, Vice President - Regulatory Affairs for ACSI, to Jerry Hendrix of BellSouth, virtually all of these issues remain unresolved. A copy of Mr. Falvey's letter is attached hereto marked Exhibit D. BellSouth responded to Mr. Falvey's letter, with a summary of time frames, on December 19, 1996. A copy of Mr. Hendrix's letter is attached hereto marked Exhibit E.

III. JURISDICTION

18.

The Commission has jurisdiction to hear this complaint pursuant to the Telecommunications and Competition Development Act of 1995 ("S.B. 137), O.C.G.A. §§ 46-5-160 *et seq.*, and Commission Rule 515-2-1-.04. Specifically, O.C.G.A. § 46-5-168(a) grants the Commission jurisdiction to implement and administer the express provisions of S.B. 137. Further, the Commission has jurisdiction to resolve complaints regarding a local exchange company's service, O.C.G.A. § 46-5-168(b)(5), and jurisdiction to direct telecommunications companies to make investments and modifications necessary to enable portability. O.C.G.A. § 46-5-168(b)(10).

The jurisdictional provisions of S.B. 137 also require that the Commission consider prevention of anticompetitive practices in any rulemaking under S.B. 137. O.C.G.A. § 46-5-168(d)(2).

IV. ARGUMENT

19.

In enacting S.B. 137, the Georgia General Assembly clearly stated its finding that the public interest is best served by market based competition for telecommunications services. O.C.G.A. § 46-5-161(a)(1). BellSouth's failure to provide unbundled loops is anticompetitive and will prevent competition from flourishing in Georgia. Without access to unbundled loops, competitive providers of telecommunications services cannot provide services to customers and cannot effectively compete with the incumbent provider. Similarly, delaying access to unbundled loops, and disrupting customers' service during the transition, damages the competitive provider's reputation for quality of service.

20.

Part of the General Assembly's intent in enacting S.B. 137 was to protect the consumer during the transition to competitive markets. O.C.G.A. § 46-5-161(b)(2). BellSouth's failure to provide unbundled loops not only damages the competitive service provider but also directly harms the consumers. The prospect of being denied service for hours or entire days in order to change telecommunications providers will be unacceptable to many business and residential customers.

21.

BellSouth has known that it would be required to unbundle local loops since the passage of S.B. 137 by the Georgia General Assembly, which was effective July 1, 1995. BellSouth has had a year and a half to implement procedures for the unbundling of the local loop, yet the

procedures to do so are clearly not formalized within BellSouth, are not tested to ensure adequate performance, and are not implemented to function as required by Georgia and Federal law. S.B.

137 states:

- (a) All local exchange companies shall permit reasonable interconnection with other certificated local exchange companies. This subsection includes all or portions of such services as needed to provide local exchange services.
...
- (d) Such interconnection services shall be provided for intrastate services on an unbundled basis similar to that required by the FCC for services under the FCC's jurisdiction.
...
- (g) The commission shall have the authority to require local exchange companies to provide additional interconnection services and unbundling.

O.C.G.A. § 46-5-164. S.B. 137 incorporates by reference the Federal unbundling standards contained in the Telecommunications Act of 1996 ("Federal Act"), signed into law on February 8, 1996. The passage of the Federal Act gave further notice to BellSouth that it must implement procedures for the unbundling of the local loop. Section 251(c)(3) of the Federal Act creates a duty on incumbent LECs such as BellSouth:

to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

22.

BellSouth has breached this duty to provide ACSI unbundled loops "in accordance with the terms and conditions of the agreement" negotiated by ACSI and BellSouth and approved by this Commission on November 8, 1996 and has thereby violated

O.C.G.A. § 46-5-164(d), as well as Section 251(c)(3) of the Federal Act. BellSouth has failed to comply with several sections of the Interconnection Agreement as approved by the Commission, including but not limited to Sections IV.C, IV.D, and IV.E.

23.

BellSouth was directed to provide unbundled loops by the Commission's Interim Order in Docket Nos. 6415-U and 6537-U, signed by the Chairman and Executive Secretary on August 21, 1996. By delaying the provision of unbundled loops, or making their acquisition prohibitive to the CLEC and its customers, BellSouth has violated the express provisions of this order.

24.

S.B. 137 provides that "all local exchange companies shall make necessary modifications to allow portability of local numbers between different certified providers of local exchange service" O.C.G.A. § 46-5-170. The Commission is conducting proceedings under Docket No. 5840-U to assure that the goals of number portability are achieved. Number portability is intended to make switching telecommunications providers as effortless as possible for the consumer. Number portability encourages the development of competition by minimizing the impact to the consumer of switching providers. The difficulties that ACSI's customers in Columbus are experiencing in switching from BellSouth demonstrate that BellSouth has not made required modifications to assure number portability.

25.

BellSouth has additional obligations as a company that has elected alternative regulation in Georgia. BellSouth applied to the Commission for alternative regulation on July 5, 1995 in Docket No. 5946-U. Pursuant to O.C.G.A. § 46-5-169(4), a company that has elected alternative regulation "[s]hall not, either directly or through affiliated companies, engage in any

anticompetitive act or practice” BellSouth is a direct competitor of ACSI for switched local exchange service customers. BellSouth has engaged in anticompetitive practices by denying access to its essential facilities through its refusal to unbundle local loops. ACSI revenues have been diverted to BellSouth by BellSouth’s anticompetitive practices. BellSouth has therefore violated O.C.G.A. § 46-5-169(4).

26.

Furthermore, pursuant to O.C.G.A. § 46-5-163(d), “[a]ny certificate of authority issued by the commission is subject to revocation, suspension, or adjustment where the commission finds upon complaint and hearing that a local exchange company has engaged in unfair competition or has abused its market position.” BellSouth is the dominant monopoly provider of switched local exchange service within its service area in Columbus, Georgia. BellSouth has clearly abused its market position and engaged in unfair competition, as discussed above. BellSouth has therefore violated O.C.G.A. § 46-5-163(d).

27.

S.B. 137 prohibits any company electing alternative regulation from giving unreasonable preference or advantage to any customer. O.C.G.A. § 46-5-169(3). BellSouth’s failure to provide unbundled loops for the provision of service to ACSI’s customers provides an unreasonable preference against ACSI’s customers, who have elected to switch service providers, in favor of those customers that elect to remain with BellSouth.

28.

Time is of the essence in preventing damage to the competitive market. The Commission has the authority to adopt emergency rules on less than 30 days notice and without a hearing in situations of imminent peril to the public health, safety or welfare. O.C.G.A. § 50-13-4(b). Unless

immediate action is taken, the damage to the reputations of CLECs for quality of service and ease of switching service will be permanently damaged. The development of competitive telecommunications markets in Georgia will be irreparably harmed and consumers will suffer the ultimate loss. The Commission recently recognized the potential for just such harm to competition in natural gas markets and, acting pursuant to its emergency rulemaking authority, adopted "Standards of Conduct for Local Distribution Companies with Marketing Affiliates," Chapter 515-7-3-.05 of the Commissions Rules, at its November 5, 1996 Administrative Session. ACSI has prepared proposed emergency rules, attached hereto marked Exhibit F, designed to assure that incumbent LECs provide unbundled loops in a manner consistent with development of competitive markets. These proposed rules are not intended to supersede more stringent provisions contained in individual parties' interconnection agreements.

29.

While ACSI will pursue its rights under arbitration and before the FCC at an appropriate time, such relief will not be effective or timely in preventing damage to the development of competitive markets in Georgia, while such remedies may compensate ACSI, BellSouth's failure to provide access to unbundled loops will damage all competitive providers and consumers in Georgia. Therefore, ACSI requests that the Commission employ the fullest extent of its authority to protect competitive markets by compelling BellSouth and other incumbent local exchange companies to provide unbundled loops in a timely and efficient manner that does not hinder the conversion of customers to competitive providers such as ACSI.

WHEREFORE, ACSI hereby prays that the Commission issue the following relief in response to this Complaint:

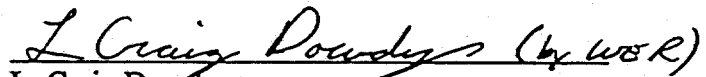
1. adopt emergency rules as proposed by ACSI to provide safeguards against


anticompetitive practices which could greatly hinder the emergence of competition;

2. order BellSouth to cease and desist from its anticompetitive practices in the provision of unbundled loops;
3. order BellSouth to cease and desist from violating the Commission's Order in Docket Nos. 6417-U and 6537-U by failure to provide reasonable access to unbundled loops;
4. impose penalties on BellSouth, as provided in O.C.G.A. § 46-2-91, for violations of S.B. 137 and orders of the Commission;
5. include a discussion of this complaint in its annual report to the General Assembly, as required by O.C.G.A. § 46-5-174, on the status of the transition to alternative regulation of telecommunications services in Georgia; and
6. issue any other relief that the Commission deems meet and proper.

This 23rd day of December, 1996.

Respectfully submitted,


L. Craig Dowdy


William E. Rice

For LONG, ALDRIDGE & NORMAN
One Peachtree Center
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308
(404) 527-4000

James C. Falvey
Riley M. Murphy
Executive Vice President and General Counsel
American Communication Services of
Columbus, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701
(301) 617-4215

Attorneys for American Communication
Services Of Columbus, Inc.

CERTIFICATE OF SERVICE

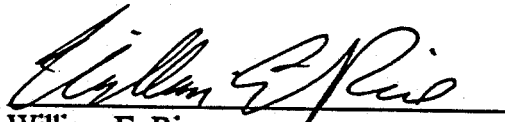
I certify that I have this day served a copy of the foregoing Complaint by American Communication Services, Inc. in Docket No. 7212-U upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

Tom Bond
Assistant Attorney General
Counsel for the Commission Advisory Staff
40 Capitol Square, Suite 132
Atlanta, Georgia 30334

Jim Hurt, Director
Consumers' Utility Counsel
Office of Consumer Affairs
2 Martin Luther King Drive
Plaza Level East, Suite 356
Atlanta, Georgia 30334

Fred McCallum, Jr.
BellSouth Telecommunications, Inc.
Room 376
125 Perimeter Center West
Atlanta, Georgia 30346

This 23rd day of December, 1996.


William E. Rice

C. Order Processing

- C.1 ACSI shall place orders for unbundled loops (and other network elements) through completion and submission of the Service Order form specified in the FBOG. The installation time intervals which shall apply thereto are as expressed in subsection IV.D hereafter.
- C.2 Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services. Automated interfaces shall be provided into a centralized operations support systems database for determining service availability on loops (e.g., ISCON), confirmation of order acceptance and ongoing order status. If made available by BellSouth to any other telecommunications carrier, automated interfaces shall be provided in a centralized operations support systems database for installation scheduling, confirmation of circuit assignments and completion confirmation.
- C.3 Particular combinations of elements, hereafter referred to as combinations, identified and described by ACSI can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.
- C.4 Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.
- C.5 When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).
- C.6 When the open network access platform is available, BellSouth will provide ACSI with the ability to have the BellSouth end office AIN triggers initiated via an appropriate service order from ACSI.
- C.7 ACSI and BellSouth will negotiate in good faith to create a mutually acceptable standard service order/disconnect order format, consistent with OBF or other mutually agreed upon procedures.
- C.8 BellSouth shall exercise best efforts to provide ACSI with the "real time" ability to schedule installation appointments with the customer on-line and access to BellSouth's schedule availability beginning in the second calendar quarter of 1997. In the interim, BellSouth will install unbundled loops and other network elements by the Customer Desired Due Date (CDDD) where facilities permit.

- C.9 When available to any other telecommunications carrier or other customer, BellSouth shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Office (LSO) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements.
- C.10 The Parties will negotiate in good faith to establish expedite and escalation procedures for ordering and provisioning, including establishment of a process for ACSI to request the expedite an order on a customer's behalf.

D. Conversion of Exchange Service to Network Elements

- D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.
- D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.
- D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.
- D.4 If the ACSI contact fails to call or is not ready within the appointed interval and if ACSI has not called to reschedule the work at least two (2) hours prior to the start of the interval, BellSouth and ACSI will reschedule the work order.
- D.5 If the BellSouth contact is not available or not ready at any time during the 30-minute interval, ACSI and BellSouth will reschedule and BellSouth will waive the non-recurring charge for the unbundled elements scheduled for that interval.

- D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.
- D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.
- D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.
- D.9 The conversion/installation time intervals which shall apply to unbundled loops and other network elements shall be as expressed herein.

E. Service Quality

- E.1 At a minimum, the service quality of leased network elements should match that of BellSouth's own elements and conform to all Bellcore and ANSI requirements applicable to the type of service being provided. In addition, BellSouth will provide maintenance services on network elements purchased by ACSI which are timely, consistent and at parity with that provided when such elements are used for its own purposes.
- E.2 Maintenance support shall be available 7 days a week, 24 hours a day. Provisioning support shall be available at the same times at which BellSouth installs its own bundled local exchange services.
- E.3 Installation and service intervals shall be the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers.
- E.4 In facility and power outage situations, BellSouth agrees to provide network elements leased by ACSI the same priority for maintenance and restoration as similar elements used by BellSouth for itself or its affiliates.
- E.5 The Parties agree that all interconnection arrangements and services will at a minimum be subject to technical standards which are equal to those that BellSouth affords to itself, other LECs or other telecommunications carriers. This must, at a minimum, include parity in:

- Port features
- Treatment during overflow/congestion conditions
- Equipment/interface protection
- Power redundancy
- Sufficient spare facilities to ensure provisioning, repair, performance and availability
- Mediation functions
- Standard interfaces
- Real time control over switch traffic parameters
- Real time access to integrated test functionality
- Real time access to performance monitoring and alarm data

F. Network Information Exchange

- F.1 BellSouth shall provide ACSI with information sufficient to determine an end user's existing service and feature configurations.
- F.2 BellSouth agrees to provide ACSI with all necessary engineering information regarding all unbundled network elements and combinations thereof, including information normally provided on records such as the detailed design layout records (DLR) for unbundled loops and circuits.
- F.3 BellSouth shall provide information to ACSI on a continuing basis required to keep ACSI apprised of engineering changes associated with BellSouth's network elements and its deployment of new technologies.
- F.4 BellSouth shall provide ACSI with a detailed description of the criteria and procedures used for handling facility and power outages.
- F.5 Where permitted by law, BellSouth will make available to ACSI electronic (magnetic tape and/or diskette) and hard copies of its Master Street Address Guide (MSAG), and any regular updates thereof.
- F.6 BellSouth will provide ACSI with access to a listing and description of all services and features available down to street address detail, including: Type of Class 5 switch by CLLI, line features availability by LSO, and service availability by LSO, as well as the data elements required by BellSouth to provision all such services and features.

G. Maintenance and Trouble Resolution

- G.1 BellSouth shall provide automated interfaces to ACSI for field dispatch scheduling, status of repairs and confirmation of repair completion. The mean time to repair unbundled loops shall be equivalent to the mean time to repair reported by BellSouth for its retail customers.

EXHIBIT B

Via Facsimile: (404) 529-0332

December 11, 1996

Mr. Richard Teel
Vice President, Regulatory
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375

Dear Richard:

ACSI is currently experiencing critical problems with BellSouth's provisioning of unbundled loops in Columbus, Georgia in violation of the Interconnection Agreement between ACSI and BellSouth approved by the Georgia Public Service Commission ("GPSC") on November 6, 1996 ("Interconnection Agreement"). Because BellSouth's provisioning problems cause ACSI customer outages, ACSI cannot add a single unbundled loop until they are resolved. Accordingly, despite the fanfare of BellSouth's interconnection agreements and pro-competitive public position, when the rubber hits the road at the operational level, BellSouth is directly impeding the development of local competition in Georgia.

It is not yet clear whether the problems stem from BellSouth's failure to develop and test its unbundled loop provisioning systems on a timely basis, or deliberate delay. In either case, the delay at this late date is inexcusable. BellSouth has known that it would be required to unbundle local loops under Georgia law since a state statute (SB 137) became effective on July 1, 1995. This obligation was reinforced by the passage of the federal Telecommunications Act of 1996 over 10 months ago. BellSouth appears to have had ample time to develop, test, and implement systems that would permit competitive local exchange carriers ("CLECs") to order unbundled loops through an efficient, speedy, and seamless process.

Furthermore, although ACSI has been experiencing loop provisioning problems for several weeks, and has attempted to resolve them in the field, ACSI notified BellSouth executives on Wednesday, December 4 that these issues were of critical importance and must be resolved immediately. More than a week later, despite further testing by BellSouth, there has been no resolution of any of the problems at issue. In

light of ACSI's current backlog of orders for almost 100 unbundled loops, ACSI cannot afford to squander further time in resolving these issues.

Specifically, ACSI is gravely concerned about the following problems that we have experienced with BellSouth, which not only have delayed our market entry, but also breach Sections IV.C, IV.D, and XI.B of the Interconnection Agreement:

- 1) ACSI is experiencing inconsistencies in the delivery and reliability of BellSouth Firm Order Commitments ("FOCs") which are causing significant and unacceptable delays in the delivery of working unbundled loops. FOCs have not been delivered on time; when they have been on time, there has not been consistent follow through. The problem stems in part from BellSouth's failure to implement the BD Telis automated system for the transfer of FOCs. Because BellSouth did not input new codes into this system, it was not timely available for unbundled loop FOCs. This has significantly delayed the FOC process, in violation of Section IV. D1 of the Interconnection Agreement.
- 2) BellSouth has a problem in its COSMOS system resulting in a failure of its cutover of ACSI customers. This has resulted in severe cutover delays that represent a direct violation of the cutover time frames contained in Section IV.D.2.
- 3) BellSouth field personnel that actually implement the process were not familiar with the entire unbundling process, clearly the result of a lack of training. They did not know how to process the ACSI orders, and in some cases, did not recognize the process altogether.
- 4) Once ACSI realized that the loop unbundling process was not working in a manner that would permit efficient cutover to uninterrupted ACSI service, ACSI requested that all cutovers be halted until BellSouth's operational problems could be resolved. BellSouth failed to honor this request and cut over three ACSI customers after ACSI's specific request to the contrary.
- 5) BellSouth has exacerbated the problems by failing to agree to and implement the appropriate escalation procedures in violation of Section IV.C.10 of the Interconnection Agreement. BellSouth has "escalated" the problems through the Account Team, which apparently lacks access to the information and processes necessary for the speedy resolution of ACSI's problems. This defeats the purpose of the escalation process. Escalation should be through the LCSC as we understand to be the case with other CLECs. BellSouth personnel have claimed that ACSI is different because it alone has specific unbundling intervals. As evidenced by the attached section of MFS' Georgia agreement, however, such intervals are *not* unique to ACSI. Even the LCSC appears to be incapable of delivering on the intervals agreed to in the Interconnection Agreement.

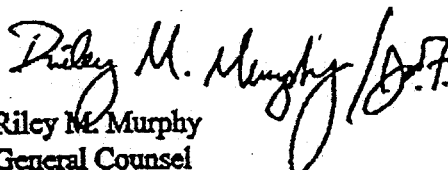
6) BellSouth has provided insufficient information, despite specific, repeated requests from ACSI regarding its 911/E911 systems. BellSouth has not provided information sufficient for ACSI to determine which Public Safety Answering Points ("PSAPs") serve the exchanges that ACSI will serve. BellSouth has also not provided a list of its tandems and the PSAPs that subtend those tandems in each state. ACSI has been forced to engage in a time-consuming and expensive fishing expedition to determine this information. Given the critical importance of this issue to the public safety, this lack of information is particularly inexcusable because it increases the chances that ACSI's 911/E911 arrangements, despite ACSI's best efforts, might not be adequate. BellSouth has made it difficult if not impossible for ACSI to implement Section XI.B. of the Interconnection Agreement.

BellSouth's failure to develop efficient unbundled loop provisioning at this late date is causing irreparable harm by delaying ACSI's ability to begin providing service to customers. As long as ACSI is incapable of obtaining efficient provisioning of unbundled loops, it intends to rapidly escalate this issue through the regulatory process at both the state and federal levels.

Please advise me of the procedures BellSouth will implement to correct each of the above-identified problems.

Thank you for your immediate attention to this matter.

Sincerely,


Riley M. Murphy
General Counsel

Enclosure

cc: GPSC Commissioners
Ms. Regina Keeney, Chief, FCC Common Carrier Bureau
Brad Mutschelknaus, Esq.
Craig Dowdy, Esq.
Mary Jo Peade, Esq. (BellSouth)
Mr. Robert Scheye (BellSouth)



BellSouth Telecommunications, Inc.
Room 4303
675 West Peachtree Street, N.E.
Atlanta, Georgia 30309
404 235-0174
Fax 404 235-0111

J. Richard Teel
Vice President-Regulatory and
External Affairs

EXHIBIT C

Via Facsimile

December 17, 1996

Ms. Riley M. Murphy
General Counsel
American Communications Services, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701

Dear Riley:

I called your office today in response to your letter of December 11, 1996. Unfortunately, you were out of the office and we did not have a chance to talk.

I want to assure you that BellSouth is highly desirous of resolving the operational issues detailed in your letter. Indeed, BellSouth has a team of over twenty people working to fix these problems as quickly as possible.

Please call me at your earliest convenience so that we can discuss BellSouth's efforts to correct the current problems. In the meantime, please accept my apologies on behalf of BellSouth for any inconvenience ACSI may have experienced.

Yours very truly,

Richard Teel
Vice President-Regulatory



EXHIBIT D

December 18, 1996

Via Facsimile

Mr. Jerry Hendrix
BellSouth Telecommunications, Inc.
675 N. Peachtree St., N.E.
Atlanta, Georgia 30375

Dear Jerry:

To follow up on our conversation of Thursday, December 12, 1996, it appears that virtually all of the problems addressed in ACSI's letter from Riley M. Murphy to Mr. Richard Teel dated December 11, 1996 ("December 11 Letter") remain unresolved. Furthermore, it appears that, despite further testing, BellSouth has failed to establish the procedures required to carry out its duties under the Interconnection Agreement between ACSI and BellSouth signed on July 25, 1996 ("Agreement").

In our conversation of December 12, 1996, as well as prior conversations, it became clear that BellSouth is unable to implement key portions of the Agreement relating to unbundled loops at this time. In previous conversations, ACSI had requested timeframes for: a) the time between the placement of an order by ACSI and firm order confirmation by BellSouth and b) the time from the placement of an order by ACSI and cutover of the customer to ACSI. Prior to December 12, BellSouth would not provide such timeframes. On December 12, 1996, you committed to: a) 48 hours between the placement of an order and firm order confirmation and b) 5 days from the placement of an order by ACSI to cutover. Of course, these timeframes have not been put into practice in ongoing tests, and ACSI cannot begin cutting over customers until tests have assured that ACSI customers will not be disconnected. Furthermore, any agreement we may reach as to interim timeframes or interim BellSouth performance goals does not excuse BellSouth from full and immediate performance of the Interconnection Agreement.

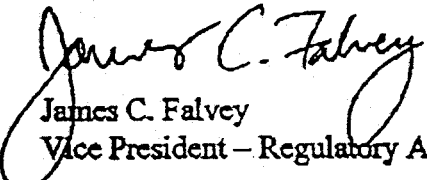
We agreed that these interim timeframes should be memorialized in writing. We also agreed that BellSouth would work towards implementing and improving upon these timeframes as required by the Agreement. We also agreed to formalize in writing expedite and escalation procedures pursuant to Section C10 of the Agreement. As stated

in the December 11 Letter, existing expedite and escalation procedures are entirely lacking.

In the meantime, statements by senior BellSouth personnel, including Executive Vice President Ann Andrews, that BellSouth is not required to perform tasks specifically delineated in the Agreement, as well as the ongoing failings of existing unbundled loop processes, are cause for grave concern. ACSI can only conclude that BellSouth has failed to devote sufficient resources to the implementation of unbundled loop processes. Throughout this process, putative ACSI customers remain BellSouth customers, diverting what should be ACSI revenues to BellSouth.

Brenda Renner and I will be prepared to discuss the memorializing of escalation, expedite, and certain timeframes later today on our 2:30 p.m. conference call.

Sincerely,


James C. Falvey
Vice President - Regulatory Affairs

cc: Riley M. Murphy
Richard Robertson
Brenda Renner
Brad Mutschelknaus, Esq.
Craig Dowdy, Esq.

BELLSOUTH
TELECOMMUNICATIONS ®

Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

EXHIBIT E

December 19, 1996

Mr. James C. Falvey
Vice President - Regulatory Affairs
ACSI
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701

Dear Mr. Falvey:

Pursuant to your request in your December 18, 1996 letter, below is a summary of the timeframes BellSouth and ACSI agreed to during our conversation of December 12, 1996.

BellSouth will make its best effort to provide ACSI with a Firm Order Confirmation within 48 hours of the receipt of a "good" order, meaning a complete order which BellSouth is able to process. Furthermore, BellSouth agrees that it will coordinate a cutover of a BellSouth customer to ACSI within five days (for non system services such as 1FBs and 1FRs) of the receipt of a "good" order from ACSI.

Based on the above agreed timeframes, BellSouth proposes the following language be incorporated into the existing agreement:

IV. Access to Unbundled Network Elements

C. Order Processing

C.9 - When available to any other telecommunications carrier or other customer, BellSouth shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Center (LSO) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements. BellSouth will make its best effort to provide ACSI with a Firm Order Confirmation within 48 hours of receipt of a complete order by BellSouth.

Mr. James C. Falvey
December 19, 1996
Page 2

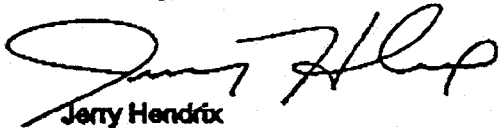
D. Conversion of Exchange Service to Network Elements

D.1 With the exception of circumstances beyond BellSouth's control, BellSouth will cutover subscribers to ACSI within five days of receipt of a complete order from ACSI. The five day time frame will be measured from the date upon which BellSouth receives a complete order from ACSI to the date of customer delivery

Jim, as we discussed during our conversation on Wednesday, December 18, 1996, I would like to include the benefits of the resulting processes from all current activities and I will target to provide proposed contract language for IV.C.10 (Expedite and Escalation) to you by December 23, 1996.

I look forward to hearing from you, please give me a call at (404) 529-8833 and we can discuss further.

Sincerely,



Jerry Hendrix
Director - Interconnection Services/Pricing

**INTERIM RULES FOR THE PROVISIONING
OF UNBUNDLED ELEMENTS**

The following are the minimum guidelines that shall apply to unbundled element provisioning:

I. Order Processing

1. Competitive Local Exchange Companies ("CLECs") shall place orders for unbundled loops (and other network elements) through completion and submission of the Service Order form specified in the Facilities Based Carrier Operating Guide ("FBOG").
2. Order processing for unbundled elements shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services. Automated interfaces shall be provided into a centralized operations support systems database for determining service availability on loops (e.g., ISCON), confirmation of order acceptance and ongoing order status. If made available by the Incumbent Local Exchange Company ("ILEC") to any other telecommunications carrier for special access or other services, automated interfaces shall be provided in a centralized operations support systems database for installation scheduling, confirmation of circuit assignments and completion confirmation.
3. Particular combinations of elements, hereafter referred to as combinations, identified and described by a CLEC can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.
4. Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.
5. When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).
6. The ILEC shall exercise best efforts to provide CLECs with the "real time" ability to schedule installation appointments with the customer on-line and access to the ILEC's schedule availability beginning in the second calendar quarter of 1997. In the interim, the ILEC will install unbundled loops and other network elements by the Customer Desired Due Date (CDDD) where facilities permit.

7. When available to any other telecommunications carrier or other customer for special access or other services, the ILEC shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Office (LSO) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements. To the extent electronic interfaces are not currently available to provide the above functions, they must still be performed by other means consistent with current special access processes.

8. The ILEC and a CLEC will negotiate in good faith to establish expedite and escalation procedures for ordering and provisioning at the earliest mutually convenient date, including establishment of a process for the CLEC to request the expedite an order on a customer's behalf.

Conversion of Exchange Service to Network Elements

1. Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as the ILEC provides services to its own customers, as measured from the date upon which the ILEC receives the order to the date of customer delivery. On an interim basis, this time frame should be no greater than five (5) days. Firm Order Confirmation shall take place within 48 hours after the ILEC receives the order. Installation and service intervals shall at a minimum be the same as when the ILEC provisions such network elements for use by itself, its affiliates or its own retail customers.

2. On each unbundled network element order in a wire center, the ILEC and the competitive local exchange carrier ("CLEC") will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the CLEC and the ILEC personnel will make telephone contact to complete the cutover.

3. Within the appointed 30-minute cutover time, the CLEC contact will call the ILEC contact designated to perform cross-connection work and when the ILEC contact is reached in that interval, such work will be promptly performed.

4. If the CLEC contact fails to call or is not ready within the appointed interval and if the CLEC has not called to reschedule the work at least two (2) hours prior to the start of the interval, the ILEC and the CLEC will reschedule the work order.

5. If the ILEC contact is not available or not ready at any time during the 30-minute interval, the CLEC and the ILEC will reschedule and the ILEC will waive the non-recurring charge for the unbundled elements scheduled for that interval.
6. The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the CLEC collocation arrangement is 5 minutes. If the ILEC causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, the ILEC must waive the non-recurring charge for that unbundled element.
7. If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of the CLEC.
8. If the CLEC has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, the ILEC will coordinate implementation of SPNP with the loop installation. Such coordination will take place within the designated 30-minute cutover time period.

DUPLICATE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business Pkwy.
Suite 100
Annapolis Junction, MD 20701
(301) 617-4200

Complainant,

v.

BELLSOUTH TELECOMMUNICATIONS, INC.)
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 614-4904

Defendant.

File No. E-

To: The Common Carrier Bureau
Enforcement Division
Formal Complaints and Investigations Branch

FORMAL COMPLAINT

American Communications Services, Inc. ("ACSI"), by and through its attorneys, and pursuant to Section 208(a) of the Communications Act of 1934, as amended, (the "Act") and Section 1.720 of the Federal Communications Commission's

Rules, brings this Formal Complaint against BellSouth Telecommunications, Inc. ("BellSouth").

INTRODUCTION

This complaint challenges BellSouth's unjust, unreasonable, discriminatory, and anticompetitive application of nonrecurring reconfiguration charges ("RNRCs") to access channel termination location moves ("ACTL moves"). BellSouth routinely imposes grossly excessive RNRCs on customers attempting to make an ACTL move, *i.e.*, switch from BellSouth and purchase ACSI's direct trunked transport ("DTT") access services.

The manner in which BellSouth applies these RNRCs is inconsistent with the terms of BellSouth's own access tariff in contravention of Section 203 of the Act. Moreover, in violation of Section 201(b) of the Act and the Commission's expanded interconnection rules and orders, these RNRCs bear no reasonable relation to the underlying costs incurred by BellSouth in accommodating an ACTL move. The unreasonably high RNRCs unfairly penalize customers that, in the nascent access transport marketplace, desire to replace BellSouth-provided DTT access with DTT access services offered by collocated competitive access providers ("CAPs"), such as ACSI, and thus impede the development of competition. In addition, and exacerbating this situation, BellSouth's RNRCs in some situations discriminate unreasonably between customers that reconfigure on BellSouth's own network and those that switch from BellSouth to CAPs, thereby violating Section 202(a) of the Act. BellSouth's practices

have caused and continue to cause significant harm to ACSI by effectively foreclosing it from obtaining business from existing BellSouth customers that are reconfiguring their access transport facilities.

PARTIES

1. Plaintiff ACSI is a Delaware corporation with its principal place of business located at 131 National Business Pkwy., Suite 100, Annapolis Junction, MD 20701.

2. ACSI -- a so-called competitive access provider -- is engaged in the business of providing competitive access services to carriers and end-user customers located primarily in the southern and southwestern regions of the United States. ACSI, through its subsidiaries, currently operates nine fiber access networks in six states, including Kentucky (Louisville), Alabama (Mobile and Montgomery), and South Carolina (Columbia and Greenville) in the BellSouth region. Construction of additional networks is underway in Birmingham, Alabama; Lexington, Kentucky; Columbus, Georgia; Jackson, Mississippi; and Charleston and Spartanburg, South Carolina. ACSI offers services both directly to customers and by means of collocating and interconnecting with local exchange telephone companies ("LECs") such as BellSouth.

3. BellSouth is a New York corporation with its principal place of business located at 4300 Southern Bell Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375.

4. BellSouth is the dominant LEC in the southeastern United States, serving the substantial majority of end-user and access customer traffic in nine states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

FACTS

5. Interstate access occurs on both the originating and terminating ends of an interstate call. In its simplest terms, "originating access" consists of the originating LEC, *i.e.*, the LEC serving the subscriber's line from which the call originates, delivering the call from the end office serving the caller to the facilities of the interstate long-distance carrier that will carry the call to its destination. "Terminating access" is simply the termination of an interstate call by the LEC serving the called party, *i.e.*, the carriage of the call from the long-distance carrier's facilities to the end office serving the called party.

6. Interstate access may be "special" or "switched." Through "special access" the originating or terminating traffic of high volume users is delivered directly (*i.e.*, without LEC switching) to or from the customer's premises to the end office (*i.e.*, the serving wire center ("SWC")) closest to the IXC's "point of presence" over dedicated, *i.e.*, DTT, circuits.

7. "Switched access" uses LEC transport facilities that are not dedicated to the traffic of a single end-user. Rather, the traffic of multiple end-users is aggregated at the LEC's central office and tandem switches and transported to the SWC, or from

the SWC to the LEC tandem switches and central office. The traffic that is being delivered to or from a particular IXC over switched access between the end-office serving the end-user and the SWC serving the IXC's point of presence may be aggregated on facilities with that of other IXCs, so-called "tandem switched transport," or may be carried on facilities dedicated to the transport of a single IXC's traffic.

8. Until the 1990's, LECs faced little or no competition in providing the local access facilities and services used in the provision of interstate telecommunications. Recent technological and regulatory changes have facilitated the development of competition in the provision of interstate special and switched access services. Several years after fiber optic-based CAPs began to offer access services to larger business customers in the central business districts of a number of major cities, the FCC adopted rules and policies to expand the ability of CAPs to interconnect with LEC end office facilities and to enlarge the universe of interstate access customers that the CAPs could service. A principal purpose of the *FCC's Expanded Interconnection* orders was to encourage local access competition by ensuring competitively neutral interconnection practices by the LECs.¹

¹ See *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7465 (1992), (requiring nonrecurring reconfiguration charges to be applied in neutral manner for special access services), *vacated in part and remanded sub nom.*, *Bell Atlantic Telephone Company v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994) *on remand*, *Expanded InterConnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154 (1994) ("Expanded Interconnection Remand Order"), *appeal docketed sub nom.*, *Southwestern Bell Telephone Corp. v. FCC*, Case No. 94-1547 (D.C. Cir. Aug. 10, 1994); *Expanded Interconnection with Local Telephone Company Facilities*, Second Report and Order (continued...)

9. ACSI has constructed local fiber networks in selected markets that enable it to establish expanded interconnection arrangements with BellSouth in order to provide dedicated transport access services, both switched and special, in competition with BellSouth.

10. When an access customer of BellSouth wishes to reconfigure existing facilities to take access from an interconnector or CAP, such as ACSI, the reconfiguration involves a change in the access channel termination location ("ACTL"). Such ACTL moves are referred to by BellSouth in its tariff simply as a "move." BellSouth charges the customer nonrecurring reconfiguration charges for the ACTL move. See BellSouth Tariff F.C.C. No. 1, §§ 6.7.7(B) and 7.4.5(B), attached hereto as part of Exhibit A. BellSouth considers all reconfigurations by its customers with a CAP as a change in customer location, warranting the imposition of RNRCs, even if the CAP is collocated in the BellSouth office currently serving the customer. The unjust, unreasonable, and discriminatory manner in which these charges are applied and the failure of these charges to reflect costs, as required by the FCC's orders, constitute the heart of ACSI's Complaint.

¹(...continued)
and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7438 (1993) ("Switched Access Second Report and Order"), *pet. for review pending sub nom. Bell Atlantic v. FCC*, No. 93-1743 (D.C. Cir., Filed Nov. 12, 1993) (citing *Expanded Interconnection with Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, 7362 (1993) ("Special Access Second Reconsideration Order")) (requiring same neutrality to be applied to expanded interconnection for switched transport).

11. The Commission has recognized that RNRCs "raise special competitive concerns."² Indeed, so concerned was the Commission that the LECs might frustrate the introduction of competition through expanded interconnection by the levels at which RNRCs were set and how they were applied, that the FCC withheld the presumption of lawfulness generally accorded to within-band, within-cap rates under the price cap rules.³

12. In its *Expanded Interconnection* proceedings, the Commission announced clear directives designed to prevent RNRCs from being manipulated to erect "serious barrier[s] to entry."⁴ Specifically, in order to ensure that RNRCs are just, reasonable, and nondiscriminatory under the Communications Act, the FCC specified that

all nonrecurring reconfiguration charges paid by interconnectors or their customers must be set no higher than cost-based levels. In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based.⁵

² *Expanded Interconnection Remand Order*, 9 FCC Rcd 5154, 5210.

³ *Id.*, affirming *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362 (explaining that withholding the presumption of lawfulness to NRCs "will permit [the FCC] greater ability to review the reasonableness of, and any differential between, the charges assessed on customers reconfiguring their service with the LEC and those taking advantage of service using an expanded interconnection arrangement").

⁴ *Switched Access Second Report and Order*, 8 FCC Rcd at 7438.

⁵ *Id.* at 7439 (citing *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362). The *Special Access Second Reconsideration Order* stressed that "[nonrecurring reconfiguration] charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented." *Id.*

13. Moreover, while the Commission noted that "[t]he LECs incur legitimate costs in making service changes, and *in general* should be able to recover these costs from interconnectors and their customers," the FCC also emphasized that

[there is an] exception . . . when the LEC does not recover non-recurring reconfiguration costs from its own special access or switched transport customers. In that case, the LEC must *not* charge customers who reconfigure in order to take service from an interconnector *more than an amount reflecting the difference between the costs of the two different types of reconfigurations.*⁶

14. In short, if BellSouth offers waivers of RNRCs to any of its customers that reconfigure while remaining with BellSouth, the RNRCs charged to customers that switch to interconnectors must reflect *only the differences* in the costs of the two different types of reconfiguration.

15. BellSouth has tariffed distinct RNRCs that apply to reconfigurations, and reflect the capacity of the dedicated transport circuits that are redirected: DS0, DS1, and DS3. DS1 circuits have 24 times the capacity of a DS0 circuit. DS3 circuits have 28 times the capacity of a DS1 circuit and 672 times the capacity of a DS0 circuit. The BellSouth tariffs establish two rates for each type of circuit that is reconfigured in addition to a cross-connect charge: (1) a "per customer request" rate for any number of circuits of a given type that are reconfigured and (2) a "per circuit reconfigured" charge for each circuit of a given type that is reconfigured. See §§ 6.8.8(J) and 7.5.17 of BellSouth's Tariff FCC No. 1 for the RNRCs for ACTL moves, attached hereto as part of Exhibit A.

⁶ *Expanded Interconnection Remand Order*, 9 FCC Rcd 5154, ¶ 212 (emphases added).

16. Since launching its competitive access networks in 1994, ACSI's business has been harmed by BellSouth's failure to apply RNRCs for ACTL moves in the fashion provided for in its tariff. Moreover, BellSouth's RNRCs for ACTL moves are unjust and unreasonable because, upon information and belief, they do not reflect BellSouth's costs of accommodating the reconfiguration. In addition, upon information and belief, BellSouth's RNRCs are discriminatory. In some cases, BellSouth charges customers that reconfigure with BellSouth RNRCs but calculates them in a manner much different than that used when a customer moves to a CAP. In other cases, BellSouth actually waives some or all RNRCs for customers reconfiguring with BellSouth or a CAP, but not with other CAPs. In each of these situations, the RNRCs BellSouth imposes on customers choosing to reconfigure with ACSI do not reflect the cost differences between such reconfigurations and reconfiguration with BellSouth (or with another CAP), as the FCC and the Act require.

COUNT I
(Violation of Section 203 of the Communications Act by
Failing to Apply RNRCs as Specified in Its Own Tariff)

17. ACSI repeats and incorporates herein the allegations made in paragraphs 1 through 16 of this Complaint.

18. Section 203(a) of the Act requires that every carrier, except connecting carriers, file schedules

showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the

system of its connecting carriers or points on the system of any other carrier subject to this Act [47 U.S.C. §§ 151 et seq.] when a through route has been established, whether such charges are joint or separate, and showing the classifications, *practices, and regulations affecting such charges.*

47 U.S.C. § 203(a) (emphasis added).

19. BellSouth has violated Section 203(a) by not publishing in its Tariff FCC No. 1 all of the practices and regulations affecting the changes for ACTL moves by customers rearranging access service with a CAP.

20. Section 203(c) of the Act further requires that a carrier shall not charge, demand, collect, or receive a greater or less or different compensation from that specified in its tariff. 47 U.S.C. §203(c).

21. BellSouth has violated Section 203(c) by charging, demanding, collecting and receiving greater compensation than that specified in its Tariff F.C.C. No. 1 for RNRCs applicable to customers that request ACTL moves so that they may obtain their access service from a CAP.

22. The rate regulations in BellSouth's Tariff F.C.C. No. 1 provide that, in the case of an ACTL move, "service reconfiguration charges are applicable per customer request and *circuit* moved as contained in 6.8.8. following." See Exhibit A, BellSouth Tariff F.C.C. No. 1, § 6.7.7(B) (emphasis added). See also *id.*, § 7.4.5(B). Thus, if an ACTL move involves the reconfiguration of a switched access DTT DS3 circuit, then the "per request" and "per circuit" charge for DS3s should be applied.

23. However, BellSouth is in fact charging, demanding, collecting, and receiving multiple DS1 RNRCs and DS0 RNRCs *in addition to* a DS3 RNRC when an

EXC customer redirects a DS3 circuit to a CAP's collocated facilities. This practice was explained to ACSI in BellSouth's response to an ACSI inquiry. See Letter from Bill French to Scott Layman, dated July 14, 1995, attached as Exhibit 1 to the Affidavit of Scott Layman, which is attached hereto as Exhibit B.

24. As explained in the letter from Mr. French, the number of DS0 or voice g NRCs BellSouth applies in calculating the total RNRC depends upon the capacity and utilization of the circuits the customer reconfigures. If the customer reconfigures a DS3 with a CAP, then up to 672 DS0 RNRCs and 28 DS1 RNRCs could be imposed in addition to one DS3 RNRC and the cross-connect charge. Upon information and belief, up to twenty-four voice grade RNRCs, plus one "per request" and one "per circuit" DS1 RNRC and the cross-connect charge, would be imposed by BellSouth if the customer reconfigures a DS1 circuit with a CAP. Exhibit B, ¶ 4.

25. Thus, when a customer reconfigures with a CAP, BellSouth is imposing multiple RNRCs per circuit in a manner which is *not* described in the rate regulations of its tariff on file with the FCC. *Id.*, ¶ 7.

26. At the very least, the BellSouth tariff is ambiguous about how the RNRCs are applied. Provisions in BellSouth's tariffs that are ambiguous must be construed against BellSouth consistent with well-settled principles of tariff

construction.⁷ Thus, BellSouth may not charge RNRCs in excess of the RNRC for the actual circuit being reconfigured, *i.e.*, DS3 or DS1 in the case of an ACTL move.

27. A single switched access DS3 RNRC applicable to ACTL moves is \$240.90 under a plain reading of BellSouth's currently effective tariff. As illustrated in Mr. French's letter, if BellSouth applies RNRCs at the DS0 and DS1 levels for moving a fully utilized DS3, the cost becomes \$9,900.90 -- an increase of over 4000%. A single special access DS3 RNRC applicable to ACTL moves is \$151.90, *i.e.*, the cross-connect charge, under BellSouth's currently effective tariff. As explained in the French Letter, if RNRCs are applied at the DS0 and DS1 levels for moving a fully utilized DS3, the total RNRC becomes \$16,531.90 -- an increase of over 10,000%. A DS1 special access reconfiguration, calculated as per paragraph 24, would be \$788.90. See Exhibit B, ¶¶ 5-6. The level of these charges when multiple DS0 and DS1 RNRCs are included -- which calculation is *not* set out clearly in BellSouth's tariff -- imposes a significant disincentive on IXCs or other large customers that desire to reconfigure with ACSI for DTT access. Thus, ACSI has been severely hindered in its ability to sell its services by this regulation and practice which is not set forth in BellSouth's tariff. *Id.*, ¶¶ 7-8.

⁷ See, *e.g.*, AT&T Communications, 10 F.C.C. Rcd. 1664, 1665 (1995); American Satellite Corporation v. MCI Telecommunications Corporation, 57 F.C.C. 2d 1165, 1167 (1976, *citing* United States v. Gulf Refining Co., 268 U.S. 542 (1925)) ("It is well settled that where there is an ambiguity, uncertainty, or reasonable doubt as to which of two constructions should prevail in a tariff schedule, the ambiguity should be resolved against the maker of the tariff and in favor of the customer.").

28. BellSouth's calculations of RNRCs for ACTL moves constitutes a violation of Section 203(c) of the Act. These actions have harmed ACSI by: a) foreclosing ACSI from profitable business opportunities with existing BellSouth customers that are reconfiguring their entrance facilities, and b) increasing ACSI's costs and reducing or eliminating the profitability to ACSI of reconfigurations for customers who utilize ACSI's services only on the condition that ACSI absorb all or part of the resulting excessive, and untariffed, RNRCs.

COUNT II
(Violation of Section 201(b) of the Communications Act
and the Expanded Interconnection Orders
by Charging Unjust and Unreasonable RNRCs)

29. ACSI repeats and incorporates herein the allegations made in paragraph 1 through 28 of this Complaint.

30. Not only does BellSouth's access charge tariff fail to set forth the exact manner in which the LEC will apply RNRCs to customers that choose to reconfigure with ACSI and other CAPs, but BellSouth is violating Section 201(b) Act which dictates that the LECs impose just and reasonable charges for their services. 47 U.S.C. § 201(b).

31. In addition, BellSouth's tariff contravenes the *Expanded Interconnection* orders of the Commission which require that all nonrecurring reconfiguration charges

paid by interconnectors or their customers must be set no higher than cost-based levels.⁸ The Commission's *Expanded Interconnection* orders survive the enactment of the Telecommunications Act of 1996. New 47 U.S.C. §§ 251(g) and (i).

32. As explained above, BellSouth has stated that it would impose multiple DS0 RNRCs when an IXC customer redirects DS1 and DS3 entrance facility circuits to ACSI's collocated facilities. See paragraphs 24-27, *supra*.

33. The tremendous practical and monetary impact of imposing multiple DS0 RNRCs and DS1 RNRCs for an ACTL move involving DS3s is described in paragraph 27 above. With RNRCs applied at the DS0 and DS1 levels, the charge for "moving" a switched access DS3 to an interconnector is \$9,900.90, while the charge for "moving" a special access DS3 to an interconnector is \$16,531.90.

34. As explained in the attached affidavit of Scott Layman, Director of Program Management, for ACSI, no cost justification exists for the enormous charges that result from the application of multiple DS0 and/or DS1s RNRCs to a customer's ACTL move of DS3 or DS1 circuits from BellSouth to a CAP. See Exhibit B, ¶¶ 9-13.

⁸ *Switched Access Second Report and Order*, 8 FCC Rcd at 7439 (citing *Expanded Interconnection with Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, 7362 (1993) ("*Special Access Second Reconsideration Order*"). See also *Expanded Interconnection Remand Order*, 9 FCC Rcd at 5154, ¶ 212. The *Special Access Second Reconsideration Order* stresses that "[nonrecurring reconfiguration] charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented."

35. An ACTL move of a customer's LEC-provided dedicated circuits to a collocated CAP facility involves labor, engineering, and recordkeeping changes that do not justify the level of the applicable RNRCs. *Id.*, ¶ 9.

36. When an IXC customer seeks to reconfigure a DS3 (or DS1) DTT transport circuit to a collocated CAP facility, as illustrated in Diagram 1 attached to Exhibit B, a LEC technician must physically detach the DS3 (or DS1) jumper cable from the cross-connect panel or multiplexer attached to the facility that goes to the IXC's point of presence, and must attach the cable to the CAP's cross-connect panel or multiplexer that is collocated within the LEC central office. An experienced technician should be able to accomplish this task in under 2 hours. No other physical labor is required. Exhibit B, ¶ 10.

37. The LEC has recordkeeping requirements associated with an ACTL move. The LEC will have to input changes in two databases. One is its Carrier Access Billing System ("CABS"), which maintains and updates customer billing data, to reflect the changes in the customer's billing information. These recordkeeping adjustments are keyed in manually, typically by a single employee within a circuit provisioning center. *Id.*, ¶ 11. The CABS inputs reflect changes to individual DS0 circuits.

38. The LEC must also update its Trunk Inventory Record Keeping System (TIRKS) database, an on-line recordkeeping system for circuit provisioning. In processing the IXC's ACTL move request, TIRKS records the change in the "Z" (terminating) coordinates of the circuit; determines the transmission facilities and

equipment needed for the new circuit; updates the assignment status of the equipment, facilities and circuits as the order is processed; specifies the test requirements for the new circuit; and modifies the equipment inventory, accordingly. These TIRKS adjustments reflect changes to the high-capacity entrance facility trunks, and are made at the DS1 level for a DS1 ACTL move and at the DS3 level for a DS3 ACTL move. A competent BellSouth terminal operator should be able to input the TIRKS and CABS changes for a DS1 in under 1.5 hours. The database changes for a DS3 should take under 40 hours for a competent operator. *Id.*, ¶ 12.

39. The RNRCs that BellSouth imposes for an ACTL move involving a DS1 or DS3 dedicated circuit bear no reasonable relation to the direct costs imposed on a LEC by a customer's reconfiguration to a CAP facility. Virtually no capital expenditures are required. Pursuant to the RNRCs stated in paragraph 27 and the time to complete database changes in paragraph 38, the charges assessed by BellSouth amount to approximately \$225 per estimated hour of labor required to accomplish a DS1 move, and almost \$400 per estimated hour for a DS3 move. *Id.*, ¶ 13. Thus, the RNRCs BellSouth imposes on DS1 or DS3 level when moving DS1 or DS3 entrance facility circuits to a collocated CAP facility are on their face unreasonable and unsupportable on cost grounds.

40. Because the RNRCs so far exceed any reasonable measure of costs, they are unjust and unreasonable in violation of § 201(b) of the Communications Act. In addition, because these RNRCs do not reflect the underlying cost to BellSouth of making the service rearrangements, they impede competition and contravene the

Commission's *Expanded Interconnection* orders. See paragraphs 11-13, *supra*. Indeed, because of these unjust and unreasonable RNRCs, ACSI effectively has been foreclosed from winning the business of BellSouth customers that have reconfigured or are planning to reconfigure their transport facilities.

COUNT III

(Violation of Section 202(a) of the Communications Act and the *Expanded Interconnection* Orders by Engaging in Unjust and Unreasonable Discrimination in the Application of RNRCs)

41. ACSI repeats and incorporates herein the allegations made in paragraphs 1 through 40 of this Complaint.

42. Section 202(a) of the Communications Act declares that:

[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

43. The *Expanded Interconnection* orders specifically prohibit discrimination between the application of RNRCs when a customer shifts to an interconnector's services versus the application of RNRCs when a customer reconfigures its services with the LEC. Specifically, the *Expanded Interconnection* orders require that any

differences between these two types of RNRCs be cost-based.⁹ Moreover, if a LEC waives RNRCs when a customer reconfigures with the LEC, the RNRCs that are charged a customer who reconfigures to this service from an interconnector may not exceed "an amount reflecting the difference between the costs of the two different types of reconfigurations."¹⁰

44. BellSouth's unjust and unreasonable discrimination in the application of RNRCs is not readily apparent because its tariff does not contain explicitly discriminatory terms regarding the application of RNRCs.

45. Rather, the ostensibly neutral RNRC rate structure is ambiguous. The ambiguity allows BellSouth to apply the RNRCs in an unreasonably discriminatory manner. *See* Exhibit 1 to Exhibit B (Mr. French's Letter).

46. Upon information and belief, in assessing RNRCs for ACTL moves, BellSouth imposes, at most, a single DS1 or DS3 RNRC per circuit when redirecting switched access circuits for customers that reconfigure with BellSouth. Upon information and belief, BellSouth has assessed such single circuit RNRCs for ACTL moves by at least two of the five largest interexchange carriers. *See* Affidavit of Deborah Sellers, Vice President of Carrier Sales for ACSI, ¶ 3, attached as Exhibit C hereto.

⁹ *Switched Access Second Report and Order*, 8 FCC Rcd at 7439 (citing *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362).

¹⁰ *Id.*

47. BellSouth's tariff provides further that, if a BellSouth customer reconfigures its access configuration with BellSouth to take BellSouth's LightGate or SmartRing service, BellSouth waives the RNRCs altogether, in what it calls the Network Optimization Waiver. See BellSouth Tariff F.C.C. No. 1, §§ 7.4.20(A) and (B), attached as part of Exhibit A. On information and belief, BellSouth has used this waiver to accommodate ACTL moves by interexchange carriers with multiple points of presence ("POPs") in the same market, for example following the acquisition of one IXC by another. Specifically, BellSouth has allowed IXCs to move circuits from one POP to the other without paying an RNRC. This waiver policy has created a non-cost-based disincentive to customers that desire to reconfigure their networks to take transport service from collocated CAPs. See Exhibit C, ¶ 4.

48. Section 7.4.20 of BellSouth's Tariff No. 1 permits an IXC with one or more POPs in the same market to achieve what is, for all practical purposes, an ACTL move without incurring an RNRC. Specifically, it is my understanding that BellSouth has placed the multiple IXC POPs on a ring topology along with a BellSouth serving wire center. (At least two IXC locations are necessary in order for the IXC to opt for the ring topology.) Once the IXC is on the ring, the IXC can redirect all of the access traffic to one of its points of presence *without* incurring any RNRCs by virtue of the Network Optimization Waiver. Thus, the IXC can reconfigure all of its traffic to a single POP and avoid the RNRCs that would otherwise apply. However, were that IXC to seek to reconfigure all of its traffic from its multiple POPs to that same POP through a CAP, BellSouth would apply RNRCs down to the DS0 level. Exhibit C, ¶ 5.

49. As noted above, under BellSouth's interpretation of the tariff language, a customer is faced with not only a DS3 RNRC, but multiple DS0 and DS1 RNRCs, if it rolls over a DS3 to a CAP. In comparison, if the customer reconfigures with BellSouth, then only a single DS3 RNRC is applied or the nonrecurring reconfiguration charge may be waived entirely. If the customer rolls over a DS1 to a CAP, it may face multiple DS0 RNRCs in addition to one DS1 RNRC (despite the silence of the tariff on this point), whereas one DS1 RNRC, or none, in the case of a waiver, would be imposed to reconfigure a DS1 from one BellSouth service to another.

50. In addition, BellSouth does not treat all collocated CAPs in an equal fashion. See Letter from Joseph R. Wilson, Sales-Vice President, Industry Services, BellSouth, to Thomas P. Byrnes, Regional Vice President, TeleCommunications Group, Inc. ("TCG"), dated June 30, 1994 ("Wilson Letter"), attached as part of Exhibit C. At pages 2-3 of the *Wilson Letter*, BellSouth informed TCG, a CAP, that it would pay, at most, a single DS3 RNRC for the rollover, *i.e.*, ACTL move, of DS3 service from BellSouth to TCG. Similar treatment has not been available to ACSI's potential customers when they contemplate reconfiguring their networks to take DS3 service from ACSI rather than BellSouth. Exhibit C, ¶ 6.

51. As discussed in paragraph 27, under BellSouth's application of DS0, DS1, and DS3 RNRCs to DS3 ACTL moves, the price to reconfigure a special access DS3 with a CAP, as explained to ACSI, is \$16,531.90 -- over 10,000% above the price if the RNRCs for a single DS3 is applied, *i.e.*, the cross-connect charge. The cost to roll

over a special access DS1 to a CAP is \$788.90, over three times the price to reconfigure a DS1 if the RNRCs for a single DS1 circuit are imposed.

52. If the customer receives a waiver when it reconfigures with BellSouth, the situation is exacerbated. In particular, the disparity between a reconfiguration to take service from a CAP and a reconfiguration with BellSouth is equal to the *full* *of the RNRC* applied in the BellSouth-to-CAP situation. Under the FCC's *Expanded Interconnection Orders*, however, the disparity in charges must be equal to the disparity in costs for two types of ACTL moves. Section 202(a) requires the same result.

53. Upon information and belief, from an operational and cost standpoint, there are no significant differences between redirecting high capacity (DS1 or DS3) dedicated transport circuits to a different customer location through BellSouth, and redirecting them to a collocated CAP's facilities. Similarly, there are no significant differences in BellSouth's costs when an IXC reconfigures with one collocated CAP as with another CAP. In all cases physical rerouting of circuits is done at the DS1 or DS3 level. Exhibit B (Layman Affidavit), ¶ 14.

54. Moreover, the database programming necessary to reflect changes in trunk assignments is similar for traffic rerouted to a different location on the customer's premises through BellSouth, and for traffic rerouted to any collocated CAP's facilities. *Id.* ¶ 15.

55. Finally, while there may be differences in the modifications made in the carrier billing database, the cost differences are *de minimis*. *Id.* ¶ 16.

56. As a result, no cost justification exists for the enormous difference in RNRCs imposed on a CAP reconfiguration versus a similar BellSouth reconfiguration, or among CAP reconfigurations. Without a cost justification for the difference in RNRCs, BellSouth has clearly violated the prohibition in Section 202(a) of the Communications Act against engaging in "unjust or unreasonable discrimination in charges . . . for or in connection with like communication service" 47 U.S.C. § 202(a). Further, BellSouth has violated the Commission's requirements that "all nonrecurring charges applicable to customers shifting to an interconnector's services are to be set no higher than cost-based levels. . . . [and] the *difference* between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be *cost-based*."¹¹ Moreover, where waivers are available for BellSouth's customers, BellSouth's application of RNRCs violates the requirement of the FCC that RNRCs may be set only to recover an amount equal to the *difference* in the costs of reconfiguration between reconfigurations for which RNRCs are collected, and those for which they are waived, such as where BellSouth customers reconfigure to BellSouth LightGate or Smart Ring service and take advantage of the Network Optimization Waiver to move traffic to a new point of presence. This requirement would also apply under Section 202(a) of the Act where BellSouth waives some or all RNRCs for

¹¹ 8 FCC Rcd at 7362 (emphasis added).

customers that reconfigure to take access from some CAPs but not from others, as described in paragraph 49.

57. BellSouth's discrimination imposes an often insurmountable disincentive to IXC's or other large customers that desire to reconfigure with ACSI. Thus, potential ACSI customers have been dissuaded by this discriminatory application of RNRCs from switching to ACSI-provided access services, and ACSI has been hindered in its ability to sell its services.

58. In turn, BellSouth's practices jeopardize the growth and viability of BellSouth's competitors. ACSI has been effectively foreclosed from competing for the business of BellSouth's customers that have reconfigured or are planning to reconfigure their DTT facilities. The end result is that BellSouth has harmed ACSI, has artificially limited the access choices of BellSouth's existing customers, and has frustrated the FCC's interconnection policy objectives.

DAMAGE TO ACSI

59. ACSI has suffered, and continues to suffer, direct damages from BellSouth's unjust, unreasonable, and discriminatory RNRCs and its application of such charges.

60. Potential ACSI customers have faced horrendous RNRCs that do not reflect BellSouth's underlying costs. Moreover, these RNRCs are far in excess of the RNRCs, if any, the customer would pay were it to reconfigure with BellSouth in a manner that imposes comparable costs on BellSouth to accommodate.

61. In ACSI's experience, the potential customer faces three choices: (1) do not reconfigure, (2) reconfigure with BellSouth so as to avoid or minimize the excessive RNRCs, or (3) move to ACSI and pay the RNRC costs or have ACSI absorb such costs. Exhibit C, ¶ 7.

62. In these situations, the only way for ACSI to make a reasonable bid for the business of the potential customer has been to offer to pay for the significant and unreasonable reconfiguration costs imposed by BellSouth. This is typically not an economically feasible option, and the lack of alternatives has effectively foreclosed ACSI from obtaining the business of existing BellSouth customers that are reconfiguring their entrance facilities. Therefore, as a result of BellSouth's practices, ACSI has lost, and will continue to lose, significant business opportunities. *Id.*, ¶ 8.

63. For example, last year, one interexchange carrier had agreed to move thirteen (13) DS3 circuits from BellSouth to ACSI. ACSI proceeded to prepare for the reconfiguration, including the purchase of OC12 equipment to accommodate the rollover. About three months after reaching agreement, the IXC canceled the order, citing the excessive RNRCs of BellSouth. As a result, ACSI lost a five-year contract worth an expected \$500,000 in revenues. *Id.*, ¶ 9.

64. As ACSI expands its operations, the magnitude of the adverse impact resulting from BellSouth's illegal practices will only mount. Operations in three of the nine markets in which ACSI has networks commenced in the last two months. Construction is currently underway in six additional markets. *See* paragraph 2, *supra*.

65. In addition, ACSI suffers a loss of goodwill when it is unable to process a customer's reconfiguration.

66. The exact amount of ACSI's damages have not yet been determined but are in excess of \$2,000,000.00 to date. More specific information on damages will be provided in a supplemental complaint as permitted by the Commission's rules.

PRAYER FOR RELIEF

67. WHEREFORE, ACSI requests that the Commission declare BellSouth's RNRCs for, and their application to, ACTL moves to be unlawful, unjust, unreasonable, discriminatory and anticompetitive in contravention of the Act and the Commission's orders, rules, and policies governing expanded interconnection.

68. ACSI requests that the Commission order BellSouth to cease engaging in the unjust, unreasonable, and discriminatory practices alleged herein by filing tariffs that clearly set out cost-based and nondiscriminatory RNRCs applicable to ACTL moves. The standard for cost-based RNRCs should be direct costs. The Commission should order BellSouth to unbundle its RNRCs for ACTL moves to reflect cost-based charges for labor, TIRKS database updating, and CABS recordkeeping in order to allow the Commission to monitor BellSouth's compliance with its *Expanded Interconnection* orders and to ensure customers pay RNRCs that reflect the costs only of the services they receive when their networks are reconfigured.

69. ACSI also requests that the Commission order BellSouth to compensate ACSI for ACSI's expenses and damages suffered from paying the unjust, unreasonable,

and discriminatory RNRCs of its potential customers and for its lost business opportunities.

70. The Commission should declare that

- the imposition of multiple DS0 and/or DS1 RNRCs on a customer that uses an expanded interconnection arrangement with a collocated CAP when an otherwise similar customer reconfiguring its service with BellSouth or another CAP pays only one DS1 or DS3 RNRCs is unlawfully unjust, unreasonable, and discriminatory, unless the difference in the total charges paid by the two customers equates to direct cost differences, if any; and
- if BellSouth waives RNRCs for a customer that reconfigures with BellSouth, it is unlawful for BellSouth to assess RNRCs against customers that switch-to collocated CAP-provided transport circuits. At a minimum, if RNRCs for customers switching to CAPs are not waived, BellSouth must not charge RNRCs that reflect more than the direct cost differences between the BellSouth-provided and CAP-provided reconfiguration.

71. ASCI requests its attorney's fees, costs, and expenses in prosecuting this matter.

72. Plaintiff further requests such other relief as the Commission deems just and proper.

73. This suit has not been filed in any court or other government agency on the basis of the same cause of action.

Respectfully submitted,

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Its Attorneys

February 15, 1996

DUPLICATE

EXHIBIT NO. _____ (ACSI-2)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AMERICAN COMMUNICATIONS
SERVICES, INC.

Complainant

v.

BELLSOUTH TELECOMMUNICATIONS,
INC.

Defendant

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)
)
) FCC File No. E-97-____
)
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FORMAL COMPLAINT

American Communication Services, Inc. ("ACSI"), by its undersigned counsel and pursuant to 47 U.S.C. § 208, hereby files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") and as grounds therefor states as follows:

I. PRELIMINARY

1. Federal and State laws intended to promote competition in the telecommunications industry require incumbent local exchange companies, such as BellSouth, to provide nondiscriminatory access to unbundled loops. ACSI, through its local exchange operating subsidiaries, is one of the earliest providers of competitive switched service in a number of states, and is the first competitor to request a significant number of unbundled loops from

BellSouth. ACSI has submitted over 130 orders for unbundled loops, most of which remain pending with BellSouth. On the handful of orders fulfilled thus far, ACSI has experienced unwarranted and unexplained delays in receiving unbundled loops and number portability from BellSouth and unreasonable service interruptions in switching customers to those loops. BellSouth's approach to unbundling indicates that the company either does not understand the provisions of the approved interconnection agreement it negotiated with ACSI, or that it does not intend to comply with such agreement. This failure to provide unbundled loops jeopardizes the ability of competitive service providers to attract and retain customers and, therefore, threatens the development of competitive markets in the BellSouth territory. Immediate action is required by the Commission in order to avoid irreparable harm to ACSI and these emerging competitive markets.

II. STATEMENT OF FACTS

2. ACSI, through its operating subsidiaries, is a competitive local exchange carrier certificated to provide dedicated local exchange service in 14 states and switched local exchange service in 11 states. ACSI is certificated to provide switched local exchange service in a number of states in the BellSouth region, including the state of Georgia. ACSI operates a total of 20 fiber optic networks throughout the South and Southwestern United States and has 30 such networks under construction.

3. BellSouth is a Regional Bell Operating Company that provides switched local exchange and other telecommunications services in nine Southern states. It is an incumbent

local exchange carrier as defined in 47 U.S.C. § 251(h). BellSouth is the incumbent provider of switched local exchange service in most ACSI operating territories in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

4. ACSI's first operational fiber optic network providing switched local exchange services is located in Columbus, Georgia, a location within BellSouth's local exchange operating territory.

5. On July 25, 1996, ACSI and BellSouth entered into an Interconnection Agreement ("Interconnection Agreement"). The Interconnection Agreement, which is appended at Exhibit A, set forth the terms and conditions for BellSouth's provision of interconnection, unbundled network elements, and local traffic exchange services, and expressly acknowledged that certain pricing issues would be submitted for arbitration before the state PUCs. In August 1996, ACSI filed petitions for arbitration with several state Commissions in the BellSouth region, requesting these Commissions to resolve certain unbundling and pricing issues.

6. Prior to the conclusion of these arbitrations, however, ACSI and BellSouth reached an agreed-upon settlement of these pricing issues. On October 17, 1996, ACSI and BellSouth signed an Amendment ("Amendment") to the Interconnection Agreement, which negotiated a resolution to all of the outstanding issues raised in the arbitrations. The Amendment is appended as Exhibit B.

7. The Interconnection Agreement between ACSI and BellSouth, including the Amendment, has been approved by the Georgia Public Service Commission and other commissions in BellSouth states pursuant to Section 252(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(e)(1).

8. The Interconnection Agreement provides specific detail regarding BellSouth's obligation to provide unbundled loops (Section IV), including Order Processing (Section IV.C.), Conversion of Exchange Service to Network Elements (Section IV.D.), and Service Quality (Section IV.E.). These provisions require, inter alia, that:

- BellSouth provide mechanized order processing procedures substantially similar to current procedures for the ordering of special access services (Sect. IV.C.2);
- BellSouth install unbundled network elements in a timeframe equivalent to that which BellSouth provides for its own local exchange services (Sect. IV.D.1);
- BellSouth establish a seamless customer switching process in which ACSI and BellSouth will agree to a cut-over time 48 hours in advance, the conversion will occur within a designated 30 minute window, and service to the customer will be interrupted for no longer than 5 minutes (Sect. IV.D.2, D.3, D.6); and
- BellSouth coordinate implementation of Service Provider Number Portability (SPNP) to coincide with loop installation (Sect. IV.D.8).

9. On November 19 and 20, 1996, ACSI placed its first three orders for unbundled loops in Columbus, Georgia, requesting cutover of the customers to ACSI service on November 27, 1996.¹ All three customers involved conversion of a single Plain Old

¹ ACSI's initial loop orders, and the events subsequent to those orders are described in the Declaration of ACSI Vice President, Network Service and Administration, Brenda Renner. See Exhibit C.

Telephone Service ("POTS") line, the simplest possible cutover. Each of the three orders included an order for SPNP.

10. ACSI submitted each of these orders in accordance with the process established in the Interconnection Agreement. These orders were confirmed by BellSouth on November 25

11. BellSouth's processing of each of these three orders completely failed to comply with the cutover standards required by Section IV.D of the Interconnection Agreement. In general, the processing of these orders was not coordinated between ACSI and BellSouth, as the Interconnection Agreement contemplated, because BellSouth unilaterally administered the cutover without contacting ACSI. Moreover, as described below, BellSouth failed to install properly the unbundled loops ACSI requested, and caused severe disruptions in service to local exchange customers that had selected ACSI as their carrier.

12. Two of ACSI's initial three customers were disconnected entirely for several hours. No outgoing calls could be placed, and customers calling the number received an intercept message indicating that the number no longer was in service. Service was disconnected for these two customers for 4-5 hours each, or approximately 50 to 60 times longer than permitted under the Interconnection Agreement.

13. Even after the improper disconnection was remedied and the intercept message was removed for these two customers, BellSouth failed to implement SPNP as ordered by ACSI,

causing further delay and disruption to ACSI's new customers. As a result, these customers could not receive any incoming calls on their lines. BellSouth's failure to implement SPNP in a timely manner violated its duty under the Interconnection Agreement to "coordinate implementation of SPNP with the loop installation." Section IV.D.8.

14. As to the third customer, his service was completely disconnected for the entire day of Wednesday, November 27, 1996.

15. As a result of BellSouth's complete failure to implement these orders, ACSI decided that it could not afford further damage to its customers' service availability, nor to ACSI's reputation, as a result of further service outages and attenuated cutovers. ACSI cannot market its local exchange services if potential customers will lose service for periods of 4 to 24 hours each time an order is placed, and if there is no assurance that customers will receive incoming calls through number portability. Therefore, ACSI informed BellSouth on Wednesday, December 4, 1996, to immediately place all orders on hold until these serious order processing and cutover problems could be resolved. After ACSI's request to put further orders on hold, however, BellSouth nonetheless disconnected three customers with pending ACSI orders, resulting in severe service impacts for these customers and further damage to ACSI's reputation.

16. Since December 4, 1996, ACSI has been unable to obtain any significant quantity of unbundled loops from BellSouth because BellSouth has not implemented procedures to ensure that ACSI customers do not experience severe service disruption. As of the date of

this Complaint, ACSI has submitted orders for 131 unbundled loops in Columbus, Georgia, and approximately 100 of those remain to be cut-over.

17. Since the November 27 service disruptions, ACSI has attempted to resolve these problems with BellSouth. ACSI held a conference call with BellSouth on December 4, 1996, in order to inform BellSouth of the problems and to discuss possible solutions to them. On December 11, 1996, Riley Murphy, General Counsel for ACSI, sent a letter to Richard Teel, Vice President, Regulatory for BellSouth, confirming in writing the problems encountered. A copy of Ms. Murphy's letter is attached hereto marked as Exhibit D. On December 17, 1996, Mr. Teel responded to Ms. Murphy's letter, assuring her that BellSouth was working to fix the problems ACSI had detailed. A copy of Mr. Teel's letter is attached hereto marked as Exhibit E. However, as demonstrated in the letter dated December 18, 1996 from James Falvey, Vice President - Regulatory Affairs for ACSI, to Jerry Hendrix of BellSouth, virtually all of these issues remain unresolved. A copy of Mr. Falvey's letter is attached hereto marked Exhibit F. Mr. Hendrix responded to Mr. Falvey's letter, on December 19, 1996, summarizing the time frames in which BellSouth will endeavor to provide ACSI with firm order confirmation and to coordinate a cutover of a BellSouth customer to ACSI after receiving a good order. A copy of Mr. Hendrix's letter is attached hereto marked Exhibit G.

18. In short, BellSouth's very recent attempts to correct its loop installation failures have fallen far short of ACSI's expectations. ACSI would have expected to have had all of its backlogged access lines cut over by this time; instead, it has only 30 lines cut over to

ACSI customers. Until ACSI has succeeded in cutting over all of its lines, ACSI revenues will continue to be diverted to BellSouth.

19. The problems ACSI has encountered are systemic and appear to be the result of an unwillingness by BellSouth to comply with its obligations under the Interconnection Agreement it reached with ACSI and under the 1996 Act. For example, a BellSouth Executive Vice President, Ann Andrews, informed ACSI on the December 4 conference call that BellSouth will not provide basic provisioning functions (such as order status, jeopardies against the due date, etc.) that are routinely provided to special access customers. Ms. Andrews stated that these functions would not be performed because they are not performed for BellSouth end users. BellSouth made similar statements in a December 11, 1996 conference call with Mary Jo Peed and Jerry Hendrix. These statements are in direct contravention of Section IV.C.2 of the Interconnection Agreement which ensures similar order processing to that currently used for special access services. While other BellSouth personnel have recently stated that ACSI is entitled to order processing similar to special access, ACSI has not yet received operational confirmation that it will enjoy such provisioning.

20. Since late November 1996, BellSouth has succeeded in cutting over a small number customers to ACSI without significant disruption. However, BellSouth has demonstrated no capability of ongoing performance, has failed to cut over the vast majority of ACSI's backlogged access lines, and has not shown that the factors that led to the earlier difficulties have been corrected. Rather, ACSI has every indication that BellSouth still has not put

systems into place for provisioning unbundled loops that should have been in place months (if not over one year) ago. ACSI has no reason to expect that BellSouth will be able to cut over scores of customers a day once ACSI's services establish even a modest foothold in Georgia and other BellSouth states.

21. In addition to causing damage to ACSI's reputation as a provider of high quality telecommunications services, BellSouth has directly caused ACSI to lose the revenues associated with its planned unbundled loop orders. As a result of BellSouth's failure to implement the procedures agreed upon in the Interconnection Agreement, BellSouth is retaining customers that have signed up for ACSI service.

22. Each day of additional delay jeopardizes ACSI's ability to retain the customers it has currently signed up for service and its ability to attract additional customers. Moreover, by occupying ACSI personnel, BellSouth's failure to provision ACSI's unbundled loops has delayed the rollout of ACSI switched local exchange service in other markets.

III. JURISDICTION

23. As detailed below, BellSouth's behavior violates Sections 251 and 252 of the Communications Act of 1934, as amended. Accordingly, the Commission has jurisdiction over ACSI's Formal Complaint pursuant to Section 208(a) of the Act. 47 U.S.C. § 208(a). See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325, § 127 (1996).

IV. CLAIMS

CLAIM ONE

BELLSOUTH HAS FAILED TO NEGOTIATE IN GOOD FAITH

24. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

25. Section 251(c)(1) of the Act imposes upon BellSouth the duty to negotiate agreements for interconnection and unbundled network elements in good faith with other telecommunications carriers. 47 U.S.C. § 251(c)(1).

26. At the time BellSouth negotiated and executed its Interconnection Agreement with ACSI, it knew or should have known that it could not provision unbundled loops with ACSI in compliance with the negotiated terms and conditions of the Interconnection Agreement. ACSI negotiated the Interconnection Agreement in good faith reliance upon BellSouth's representations of the terms and conditions under which it would provision unbundled loops.

27. BellSouth's negotiation of an agreement to terms and conditions that it knew it could not meet was negotiation in bad faith in violation of Section 251(c)(1) of the Act and damaged ACSI, which relied upon BellSouth's ability to meet such terms and conditions.

CLAIM TWO

BELLSOUTH HAS FAILED TO PROVIDE INTERCONNECTION TO ACSI EQUAL TO THAT PROVIDED BY BELLSOUTH TO ITSELF

28. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of the Formal Complaint as though fully set forth in this paragraph.

29. Section 251(c)(2) of the Act requires incumbent local exchange carriers such as BellSouth to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with its network for the transmission and routing of telephone exchange services, "that is at least equal in quality to that provided by the local exchange carrier to itself."

30. To date, a significant percentage of ACSI's customers for whom ACSI has ordered BellSouth unbundled loops (to be interconnected with ACSI's facilities and equipment for the transmission and routing of telephone exchange service) have experienced serious service outages and delays.

31. These service outages and delays have resulted in ACSI's interconnection with BellSouth to be of a quality inferior to that provided by BellSouth to itself.

32. Such inferior interconnection violates Section 251(c)(2) of the Act and has impeded competition in the BellSouth market, harmed ACSI's customers, and caused ACSI damage.

CLAIM THREE

BELLSOUTH HAS FAILED TO PROVIDE INTERCONNECTION TO ACSI IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE BELLSOUTH-ACSI INTERCONNECTION AGREEMENT

33. ACSI incorporates herein by reference hereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

34. Section 251(c)(2)(D) of the Act requires incumbent local exchange carriers to provide interconnection to other carriers "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and in accordance with the terms and conditions of [an interconnection] agreement" approved under Section 252 of the Act. 47 U.S.C. § 251(c)(2)(D).

35. The Interconnection Agreement sets forth terms and conditions under which BellSouth is to provide interconnection to ACSI's facilities and equipment.

36. BellSouth has refused or failed to provide interconnection to ACSI pursuant to just and reasonable terms and conditions, or in accordance with the terms and conditions in the Interconnection Agreement.

37. BellSouth's refusal and failure is a violation of Section 251(c)(2)(D) of the Act and has impeded competition in BellSouth's territory, has harmed ACSI's customers, and has caused ACSI's damages.

CLAIM FOUR

BELLSOUTH HAS FAILED TO PROVIDE ACSI WITH UNBUNDLED LOOPS AS REQUIRED BY THE 1996 ACT

38. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

39. Section 251(c)(3) requires BellSouth to provide to ACSI nondiscriminatory access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the Interconnection Agreement. 47 U.S.C. § 251(c)(3).

40. BellSouth has refused or failed to provide access to ACSI to unbundled loop network elements on terms and conditions that are just and reasonable or are in accordance with the Interconnection Agreement.

41. BellSouth's refusal and failure is in violation of Section 251(c)(3) of the Act and has impeded competition in BellSouth's territory, has harmed ACSI's customers, and has caused ACSI damage.

V. DAMAGES

42. ACSI reserves its right, pursuant to Section 1.722(b) of the FCC's Rules, to request the award of damages upon a supplemental complaint based upon a finding of liability against

BellSouth in this proceeding. ACSI hereby requests the recovery of damages, although, to the extent BellSouth's actions are ongoing, the full amount is currently unknown.

VI. OTHER ACTIONS

43. ACSI filed an action based upon the transactions alleged herein under state and federal law stating similar causes of action before the Georgia Public Service Commission on December 23, 1996. The Georgia Public Service Commission complaint, however, does not request an award for damages. No other suits have been filed before any other governmental agency or court stating the same or similar causes of action.

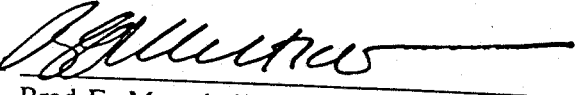
VII. PRAYER FOR RELIEF

WHEREFORE, ACSI requests the FCC to issue an Order

1. Finding BellSouth's behavior described herein to constitute (a) bad faith negotiation in violation of Section 252(c)(1); (b) the failure to provide interconnection in accordance with Section 252(c)(2); and (c) the failure to provide access to unbundled loops in accordance with Section 252(c)(3),
2. Directing BellSouth to provision unbundled loops in accordance with the Interconnection Agreement,
3. Requiring BellSouth to compensate ACSI for the damages ACSI has suffered from BellSouth's violations of Sections 251(c)(1)-(3) and the Interconnection Agreement,
4. Requiring BellSouth to compensate ACSI for its attorney's fees, costs, and expenses in prosecuting this matter, and
5. Granting such other relief as the FCC deems just and proper.

Respectfully submitted,

AMERICAN COMMUNICATIONS
SERVICES, INC.

By 

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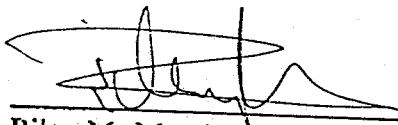
January 6, 1997

VERIFICATION

I, Riley M. Murphy, declare under penalty of perjury that the following is true and correct:

1. That I am the Executive Vice President of Legal and Regulatory Affairs, General Counsel and Secretary of American Communications Services, Inc.
2. That I have carefully read the foregoing "Formal Complaint," that I have personal knowledge of the matters discussed therein, and with the exception of those matters that are subject to judicial notice on the part of the Commission, find that the facts and representations stated therein are true and accurate to the best of my knowledge and belief.

Signed:


Riley M. Murphy

Dated: 1/2/97